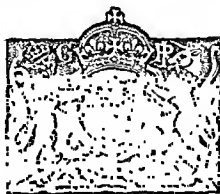


GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE
UNREPEALED GENERAL ACTS
OF
THE GOVERNOR GENERAL IN COUNCIL :
WITH CHRONOLOGICAL TABLE AND
INDEX.

From 1873 to 1886, both inclusive.

VOL. II.
FIFTH EDITION.



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PREFACE.

THE second volume of the General Acts (fifth edition) has been compiled generally on the same lines as the first.

2. With reference to the foot-notes as to the extension or application by notification of Acts, it should be borne in mind that, where an Act has been so extended or applied, it is to be taken as having been extended or applied as textually amended by subsequent legislation (if any) up to the date of the notification. The Acts included in this Volume are printed as amended up to the 31st December 1927.

A. L. BANERJEE,
*Assistant Secretary,
Legislative Department,
Government of India.*

SIMLA;
The 10th October, 1928.

LIST OF ABBREVIATIONS USED.

Aj Code	.	.	For Ajmere Code
B and O Code	.	.	„ Bihar and Orissa Code
Bal Code			„ Baluchistan Code
Ben Code			„ Bengal Code
Bom Code			„ Bombay Code
Bnr Code	.	.	„ Burmn Code
O Provs Code	.	.	„ Central Provinces Code
Mad Code	.	.	„ Madras Code
P and N-W F Code			„ Punjab and North-West Frontier Code
U P Code	.	.	„ United Provinces Code
Coll Stat Ind	.		„ Collection of Statutes relating to India.
Gen R & O	.	.	„ General Statutory Rules and Orders
Ben R and O	.	.	„ Bengal List of Local Statutory Rules and Orders
Bom R and O	.		„ Bombay List of Local Rules and Orders
O P R and O	.	.	„ Central Provinces List of Local Rules and Orders
Mad R and O	.	.	„ Madras List of Local Rules and Orders
Pnnj R and O	.	.	„ Pnnjnb List of Local Rules and Orders
U P. R and O	.	.	„ United Provinces List of Local Rules and Orders
Bur R M	.	.	„ Burma Rules Manual
Brit Enact, N S	.	.	„ British Enactments in force in Native States

CHRONOLOGICAL TABLE

OF THE

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1873—1886

The references to pages in the fifth column are to pages of this volume

1	2	3	4	5
Year	No	Short title.	How repealed or otherwise affected by legislation.	Where published
1873	V	The Government Savings Banks Act, 1873	Rep in pt, Act 12 of 1873, Act 16 of 1874, Act 12 of 1891 Amended Act 13 of 1916, Act 17 of 1917 Act 16 of 1923 Declared in force in— the Sonthal Parganas, Reg 3 of 1899, s 3, the Arakan Hill District, Reg 1 of 1916, s 2, Upper Burma (except the Shan States), Act 13 of 1893, s 4	P 1
"	X	The Indian Oaths Act, 1873	Rep in pt, Act 12 of 1873, Act 12 of 1876. Amended, Act 6 of 1919, Act 10 of 1927 S 7, Explanation (as to Lower Burma), rep, Act 6 of 1900, s 48 Declared in force in— the Sonthal Parganas, Reg 3 of 1872, s 3, the Angul District, Reg. 3 of 1913, s 3, the Arakan Hill District, Reg 1 of 1916, s 2, Upper Burma (except the Shan States), Act 13 of 1893, s 4 British Baluchistan, Reg 2 of 1913, s 3. Pargana of Manipur, Reg 2 of 1916, s 2	P 8.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1874	III	The Married Women's Property Act, 1874.	Rep. in pt., Act 12 of 1876 ; Act 6 of 1888 ; Act 12 of 1891 ; Act 12 of 1923 ; Act 39 of 1925. Amended, Act 38 of 1920 ; Act 13 of 1923 ; Act 18 of 1927. Declared in force in— the Sonthal Parganas, Reg. 3 of 1872, s. 3 ; Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	P. 11.
"	IV	The Foreign Recruiting Act, 1874.	Rep. in pt., Act 12 of 1876. Declared in force in— the Arakan Hill District, Reg. 1 of 1916, s. 2 ; Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; British Baluchistan, Reg. 2 of 1913, s. 3.	P. 15.
"	IX	The European Vagrancy Act, 1874.	Rep. in pt., Act 1 of 1879 ; Act 10 of 1914. Rep. in pt. and am.— Act 4 of 1914 ; Act 38 of 1920. Amended, Act 12 of 1891 ; Act 12 of 1923. Declared in force in— the Sonthal Parganas, Reg. 3 of 1872, s. 3 ; the Angul District, Reg. 3 of 1913, s. 3 ; the Arakan Hill District, Reg. 1 of 1916, s. 2 ; Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; British Baluchistan, Reg. 2 of 1913, s. 3.	P. 16.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title	How repealed or otherwise affected by legislation	Where published.
1874	XIV	The Scheduled Districts Act, 1874.	Rep. in pt., Act 19 of 1879; Act 14 of 1881; Act 25 of 1881, Act 8 of 1883, Act 7 of 1885; Act 20 of 1890; Act 6 of 1902; Reg. 1 of 1900; Act 12 of 1927. Rep. in pt. and am.— Act 12 of 1891; Act 38 of 1920. Amended, Act 2 of 1893. Declared in force in— the Angul District, Reg. 3 of 1913, s. 3, the Arakan Hill District, Reg. 1 of 1916, s. 2; Upper Burma (except the Shan States), Act 13 of 1898, s. 4, British Baluchistan, Reg. 2 of 1913, s. 3; Laccadive Islands and Minicoy, Reg. 1 of 1912, s. 3, Talucs of Nugur, Albaha and Cherla, Reg. 1 of 1909, s. 2. Pargana of Manipur, Reg. 2 of 1926, s. 2	P. 31.
" "	XV	The Laws Local Extent Act, 1874.	Rep. in pt., Act 8 of 1876; Act 12 of 1876; Act 18 of 1877; Act 6 of 1878; Act 11 of 1878; Act 19 of 1879; Act 14 of 1881; Act 26 of 1881; Act 10 of 1882; Act 8 of 1883; Act 7 of 1885; Act 8 of 1887; Act 9 of 1887; Act 7 of 1889; Act 13 of 1889; Act 8 of 1890; Act 20 of 1890; Act 4 of 1894; Act 9 of 1894; Act 11 of 1901;	P. 47.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1874	XV	The Laws Local Extent Act, 1874— <i>contd.</i>	Rep. in pt., Act 1 of 1903 ; Act 4 of 1922 ; Act 21 of 1923 ; Act 12 of 1927 ; Ben. Act 2 of 1913 ; B. & O. Act 1 of 1913. Rep. in pt. and am.— Act 14 of 1881 ; Act 12 of 1891.	
1875	IX	The Indian Majority Act, 1875.	Amended, Act 8 of 1890. Declared in force in— Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; British Baluchistan, Reg. 2 of 1913, s. 3 ; Pargana of Manpur, Reg. 2 of 1926, s. 2.	P. 67.
"	XIII	The Probate and Administration Act, 1875.	Short title given, Act 14 of 1897. Rep. in pt., Act 8 of 1890 (virtually) ; Act 12 of 1891 ; Act 8 of 1903. Rep. in pt. and am. - Act 10 of 1914 ; Act 10 of 1901 (virtually). Declared in force in— the Sonthal Parganas, Reg. 3 of 1872, s. 3 ; Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	P. 69.
"	XVIII	The Indian Law Reports Act, 1875.	Rep. in pt., Act 12 of 1876. Amended, Act 38 of 1920 ; Act 32 of 1925 ; Act 34 of 1926 (when notified).	P. 70.
1876	IX	The Native Coinage Act, 1876.	S. 1 rep. in pt., Act 10 of 1914.	P. 71.

Chronological Table.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN
COUNCIL—*contd*

1	2	3	4	5
Year	No	Short title.	How repealed or otherwise affected by legislation	Where published
1876	XVI	The Stage Carriages Act (1861) Amendment Act, 1876	Short title given, Act 14 of 1897 Rep in pt, Act 1 of 1898	P 73
"	XIX	The Dramatic Performances Act, 1876	Rep in pt, Act 4 of 1914, Act 10 of 1914 Declared in force in Upper Burma except the Shan States (with the exception of s 12), Act 13 of 1898, s 4	P 74
1877	I	The Specific Relief Act, 1877	Rep in pt, Act 12 of 1891, Act 2 of 1882 (locally), Act 4 of 1882 (locally) S 21 application restricted, and rep in pt (locally), Act 9 of 1899, ss 3, 21 Amended, Act 7 of 1912, Act 11 of 1923, Act 10 of 1927 Am (in Burma), Bur Act 11 of 1922 Declared in force in Upper Burma (except the Shan States), Act 13 of 1898, s 4 Declared in force in the Paragan of Manipur, Reg 2 of 1926, s 2 S 9 declared in force in British Baluchistan, Reg 2 of 1913, s 3	P 76
"	IV	The Presidency Magistrates (Court fees) Act, 1877	Short title given, Act 14 of 1897 Rep (except s 57), Act 10 of 1892	P 109
1878	I	The Opium Act, 1878	Rep in pt, Act 4 of 1894 Rep in pt and am — Act 11 of 1891, Act 38 of 1920 Supplemented Bur Act 7 of 1909	P 110

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1878	I	The Opium Act, 1878— <i>contd.</i>	Amended— in Bombay, Bom. Act 2 of 1923; in Punjab, Punj. Act 3 of 1925. Declared in force in— the Sonthal Parganas, Reg. 3 of 1872, s. 3; the Angul District, Reg. 3 of 1913, s. 3; British Baluchistan, Reg. 2 of 1913, s. 3; Upper Burma (except the Shan States), Act 13 of 1898, s. 4; Arakan Hill District, Reg. 1 of 1916, s. 2.	
"	VI	The Indian Treasure-trove Act, 1878.	Rep. in pt., Act 12 of 1891; Act 10 of 1914. Declared in force in— the Sonthal Parganas, Reg. 3 of 1872, s. 3, as amended by Reg. 3 of 1899, s. 3; the Angul District, Reg. 3 of 1913, s. 3; Upper Burma (except the Shan States), Act 13 of 1898, s. 4; British Baluchistan, Reg. 2 of 1913, s. 3; Arakan Hill District, Reg. 1 of 1916, s. 2.	P. 119.
"	VIII	The Sea Customs Act, 1878.	Rep. in pt., Act 16 of 1904; Act 3 of 1914; Act 10 of 1914; Act 4 of 1916. Rep. in pt. and am.— Act 4 of 1914; Act 12 of 1914. Amended, Act 9 of 1885; Act 2 of 1887; Act 4 of 1889, as amended by Act 9 of 1891; Act 8 of 1889; Act 9 of 1891; Act 12 of 1891; Act 8 of 1894; Act 5 of 1913;	P. 124.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN
COUNCIL—*contd*

1	2	3	4	5
Year	No	Short title	How repealed or otherwise affected by legislation	Where published
1878	VIII	The Sea Customs Act, 1878— <i>contd</i>	Amended Act 9 of 1915, Act 13 of 1919, Act 14 of 1922, Act 4 of 1924, Act 8 of 1924, Act 8 of 1927, Supplemented, Act 8 of 1896, Act 19 of 1924 Applied with modifications, Act 2 of 1896 Application of s 150 extended, Act 13 of 1890, s 9 Application of s 39 extended, Act 6 of 1917 s 1 Declared in force (ss 144 to 154)— in the Angul District, Reg 3 of 1913, s 3, in Upper Burma (except the Shan States), Act 13 of 1893 s 4 Certain sections extended to British Baluchistan by noti- fication under s 5 of Act 14 of 1874	
"	XI	The Indian Arms Act 1878	Rep in pt, Act 12 of 1891 Amended Act 20 of 1919, Act 49 of 1920 Declared in force in— the Sonthal Parganas, Reg 3 of 1872 s 3, as amen- ded by Reg 3 of 1899, s 3 Upper Burma (except the Shan States), Act 13 of 1893 s 4, the District of Angul (except s 15), Reg 3 of 1913, s 3, Arakan Hill District, Reg 1 of 1916 s 2, Pargana of Manipur, Reg 2 of 1926, s 2, Extended to British Balu- chistan by notification under ss 5 and 5 A of Act 14 of 1874	P 214

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1879	VI	The Elephants' Preservation Act, 1879.	Amended, Act 2 of 1883. Rep. in pt., Act 38 of 1920. Declared in force in — Chittagong Hill Tracts, Reg. 1 of 1900, s. 4; Arakan Hill District, Reg. 1 of 1916, s. 2.	P. 227.
"	XVIII	The Legal Practitioners Act, 1879.	Amended, Act 9 of 1884; Act 11 of 1896; Act 6 of 1900 (in Lower Burma); Act 1 of 1903; Act 1 of 1908; Act 32 of 1925; Act 15 of 1926; U. P. Act 4 of 1925 (in U. P.); Act 34 of 1926 (when notified). Rep. in pt., Act 18 of 1919; Act 11 of 1923; Act 21 of 1926. Rep. in N.-W. F. P. (except s. 36), Reg. 7 of 1901. Rep. in pt. (in Burma), Bur. Act 11 of 1922.	P. 230.
1880	I	The Religious Societies Act, 1880.	Rep. in pt., Act 10 of 1914. Amended, Act 38 of 1920.	P. 250.
"	XII	The Kazis Act, 1880	Rep. in pt., Act 10 of 1914	P. 253.
1881	XI	The Municipal Taxation Act, 1881.	Rep. in pt., Act 10 of 1914. Amended, Act 10 of 1927. Declared in force in Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	P. 254.
"	XVI	The Obstructions in Fairways Act, 1881.	Rep. in pt., Act 10 of 1914.	P. 256.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1881	XXVI	The Negotiable Instruments Act, 1881.	Rep. in pt. and amended, Act 2 of 1885. Rep. in pt., Act 12 of 1891. Amended, Act 6 of 1897; Act 4 of 1914; Act 5 of 1914; Act 8 of 1919; Act 25 of 1920; Act 12 of 1921; Act 18 of 1922; Act 30 of 1926. Declared in force in,— Upper Burma (except the Shan States), Act 13 of 1898, s. 4; British Baluchistan, Reg. 2 of 1913, s. 3.	P. 258.
1882	II	The Indian Trusts Act, 1882.	Amended, Act 3 of 1908; Act 1 of 1916; Act 21 of 1917; Act 31 of 1920; Act 37 of 1925. Rep. in pt., Act 12 of 1891.	P. 293.
"	IV	The Transfer of Property Act, 1882	Rep. in pt., Act 5 of 1908; Act 38 of 1920. Rep. as to Crown Grants, Act 16 of 1895. Rep. (in the City of Madras) to certain extent, Mad. Act 3 of 1922. Rep. in pt. and amended, Act 2 of 1900. Amended, Act 3 of 1885; Act 6 of 1904; Act 11 of 1915; Act 38 of 1925; Act 27 of 1926; Act 10 of 1927. Supplemented, Act 26 of 1917. Continued in force (with modifications) in territory transferred to Delhi Province, Act 7 of 1915.	P. 325.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN
COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1882	IV	The Transfer of Property Act, 1882— <i>contd.</i>	Declared in force in the Pargana of Manpur, Reg. 2 of 1926, s. 2.	
"	VII	The Powers of Attorney Act, 1882.	Rep. in pt., Act 12 of 1891. S. 4 (f) rep. in pt., Act 6 of 1900 (as to Lower Burma). Declared in force in the Sonthal Parganas, Reg. 3 of 1872, s. 3.	P. 377.
"	VIII	The Indian Penal Code Amendment Act, 1882.	Short title given, Act 14 of 1897. Virtually amended, Act 10 of 1886. Declared in force in the Sonthal Parganas, Reg. 3 of 1872, s. 3.	P. 379.
	XII	The Indian Salt Act, 1882	Rep. in pt., Act 20 of 1884 ; Act 12 of 1891 ; Act 10 of 1914. Rep. in pt. and amended, Act 19 of 1890. Repealed in Burma, Bur. Act 2 of 1917. Declared in force in— the Sonthal Parganas (except s. 31), Reg. 3 of 1872, s. 3 ; British Baluchistan, Reg. 2 of 1913.	P. 381.
"	XV	The Presidency Small Cause Courts Act, 1882.	Rep. in pt., Act 12 of 1891 ; Act 7 of 1896 ; Act 5 of 1908 ; Act 38 of 1920 ; Act 12 of 1927. Rep. in pt. and amended— Act 1 of 1895 ; Act 7 of 1912 ; Act 10 of 1914. Amended, Act 7 of 1892 ; Act 3 of 1899 ; Act 4 of 1906 ; Act 9 of 1912 ; Act 23 of 1917 ;	P. 396.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—contd

1	2	3	4	5
Year	No	Short title	How repealed or otherwise affected by legislation	Where published
1882	XV	The Presidency Small Cause Courts Act, 1882 —contd	Amended, Mad Acts 5 of 1916 and 3 of 1927 (as to Madras), Ben Act 4 of 1922 (as to Bengal) Supplemented (as to the City of Madras), Mad Act 3 of 1922	
"	XIX	The Punjab University Act, 1882	Rep in pt, Act 12 of 1891, Act 8 of 1904, Act 10 of 1914 Supplemented, Act 8 of 1904	P. 429
1883	II	The Elephanta Preservation Act (1879) Amendment Act, 1883	Short title given, Act 14 of 1897	P 437
"	V	The Indian Merchant Shipping Act, 1883	Repealed (except section 38), Act 21 of 1923	P*438
"	XIX	The Land Improvement Loans Act, 1883	Rep in pt, Act 12 of 1891, Act 8 of 1906, Act 10 of 1908, Act 4 of 1914, U P Act 12 of 1922 (in U P) Amended, Act 18 of 1899, Act 8 of 1906, Act 4 of 1914 Declared in force in— the Sonthal Parganas, Reg 3 of 1872, s 3, Upper Burma (except the Shan States), Act 13 of 1893, s 4, British Baluchistan, Reg 2 of 1913, s 3, the Angul District, Reg 3 of 1913, s 3, the Arakan Hill District, Reg 1 of 1916, s 2	P*438.
1884	IV	The Indian Explosives Act, 1884	Rep in pt, Act 10 of 1889, Act 12 of 1891, Act 10 of 1914 Amended, Act 10 of 1927	P. 443

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1884	IV	The Indian Explosives Act, 1884— <i>contd.</i>	Declared in force in— the Sonthal Parganas, Reg. 3 of 1872, s. 3 ; Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	
„	IX	The Legal Practitioners Act, 1881.	Rep. in pt., Act 12 of 1891 ; Act 2 of 1899 ; Act 10 of 1914. S. 8 virtually amended (in Lower Burma), Act 6 of 1900. S. 9. virtually amended, Act 1 of 1903.	P. 450.
„	XII	The Agriculturists' Loans Act, 1884,	Amended, Act 8 of 1906 ; Act 4 of 1914. Rep. except ss. 1, 4, 5 and 6 in taluqas of Nugur, Albaka and Cherla, Reg. 1 of 1909, s. 3 (2). Rep. in pt. in U. P., U. P. Act 12 of 1922. Declared in force in— Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; the Arakan Hill District, Reg. 1 of 1916, s. 2. S. 2 declared in force in British Baluchistan, Reg. 2 of 1913, s. 3.	P. 452.
1885	II	The Negotiable Instruments Act, 1885.	Rep. in pt., Act 12 of 1891.	P. 453.
	III	The Transfer of Property Act (1882) Amendment Act, 1885.	Short title given, Act 14 of 1897.	P. 455.
	IX	The Excise and Sea Customs Law Amendment Act, 1885.	Short title given, Act 14 of 1897. Rep. in pt., Act 12 of 1891 ; Act 12 of 1896 ; Act 1 of 1903 ; Ben. Act 5 of 1909 ; E. B. and A. Act 1 of 1910 ;	P. 457.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN
COUNCIL—*contd*

I	2	3	4	5
Year	No	Short title	How repealed or otherwise affected by legislation	Where published
1885	XII	The Indian Sea Passengers Act, 1835	Rep in pt, Act 12 of 1891 The whole Act is to be repealed on s 146 of Act 21 of 1923 coming into force	P 458
"	XIII	The Indian Telegraph Act 1885	Amended, Act 11 of 1888, Act 7 of 1914, Act 14 of 1914 Declared in force in— the Sonthal Parganas, Reg 3 of 1872, s 3, British Baluchistan, Reg 2 of 1913, s 3, Upper Burma (except the Shan States), Act 13 of 1893, s 4, the Angul District Reg 3 of 1913, s 3, the Arakan Hill District, Reg 1 of 1916, s 2 Pargana o Manou, Reg 2 of 1926, s 2	P 462
"	XVIII	The Land Acquisition (Mines) Act, 1885	Rep in pt and amended, Act 38 of 1920 Declared in force in— the Sonthal Parganas, Reg 3 of 1872, s 3, the Angul District, Reg 3 of 1913, s 3	P 476
1886	IV	The Indian Contract Act (1872) Amendment Act 1886	Short title given Act 14 of 1897 Rep in pt Act 12 of 1891 S 1, declared in force in the Sonthal Parganas, Reg 3 of 1872, s 3	P 483
"	VI	The Births, Deaths and Marriages Registration Act, 1886	Rep in pt, Act 2 of 1891, Act 12 of 1891 Rep in pt and amended— Act 9 of 1911, Act 38 of 1920 Amended, Act 16 of 1890	P 483

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—concl'd.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1886	VI	The Births, Deaths and Marriages Registration Act, 1886— <i>cont'd.</i>	Declared in force in— the Sonthal Parganas, Reg. 3 of 1872, s. 3 ; British Baluchistan, Reg. 2 of 1913, s. 3 ; Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; a certain area in the Northern Shan States, Act 13 of 1898, s. 10 ; the Arakan Hill District, Reg. 1 of 1916, s. 2 ; Chittagong Hill Tracts, by notification under s. 4(2) (·) of Reg. 1 of 1900.	
"	X	The Indian Criminal Law Amendment Act, 1886.	Short title given, Act 14 of 1897. Rep. in pt., Act 12 of 1891 ; Act 5 of 1898 ; Act 3 of 1900. Rep. in pt. and amended, Act 10 of 1914. S. 21 to 24 (1) declared in force in the Sonthal Parganas, Reg. 3 of 1872.	P. 498.
"	XI	The Indian Tramways Act, 1886. §	Rep. in pt., Act 9 of 1890. Amended, Act 5 of 1911. Declared in force in Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	P. 500. 1

THE
UNREPEALED GENERAL ACTS
OF
THE GOVERNOR GENERAL IN COUNCIL,
1873—1886.

THE GOVERNMENT SAVINGS BANKS ACT, 1873.

CONTENTS.

PREAMBLE.

Preliminary.

SECTIONS.

1. Short title.
Local extent.
2. [*Repealed.*]
3. Interpretation clause.

Deposits belonging to the Estates of deceased Persons.

4. Payment on death of depositor.
5. Payment to be a discharge.
Saving of right of executor.
Saving of right of creditor.
6. Security for due administration.
7. Power to administer oath.
Penalty for false statements.
8. Deposit when excluded in computing court-fees.
9. Act not to apply to deposits belonging to estates of European soldiers or deserters.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN
COUNCIL—*concl'd.*

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected by legislation.	Where published.
1886	VJ	The Births, Deaths and Marriages Registration Act, 1886— <i>cont'd.</i>	Declared in force in— the Sonthal Parganas, Reg. 3 of 1872, s. 3 ; British Baluchistan, Reg. 2 of 1913, s. 3 ; Upper Burma (except the Shan States), Act 13 of 1898, s. 4 ; a certain area in the Northern Shan States, Act 13 of 1898, s. 10 ; the Arakan Hill District, Reg. 1 of 1916, s. 2 ; Chittagong Hill Tracts, by notification under s. 4(2) (·) of Reg. 1 of 1900.	
"	X	The Indian Criminal Law Amendment Act, 1886.	Short title given, Act 14 of 1897. Rep. in pt., Act 12 of 1891 ; Act 5 of 1898 ; Act 3 of 1900. Rep. in pt. and amended, Act 10 of 1914. S. 21 to 24 (1) declared in force in the Sonthal Parganas, Reg. 3 of 1872.	P. 498.
"	XI	The Indian Tramways Act, 1886.	Rep. in pt., Act 9 of 1890. Amended, Act 5 of 1911. Declared in force in Upper Burma (except the Shan States), Act 13 of 1898, s. 4.	P. 500.

THE
UNREPEALED GENERAL ACTS
OF
THE GOVERNOR GENERAL IN COUNCIL,
1873—1886.

THE GOVERNMENT SAVINGS BANKS ACT, 1873.

CONTENTS.

PREAMBLE.

Preliminary.

SECTIONS.

1. Short title.
Local extent.
2. [*Repealed.*]
3. Interpretation clause.

Deposits belonging to the Estates of deceased Persons

4. Payment on death of depositor.
5. Payment to be a discharge.
Saving of right of executor.
Saving of right of creditor.
6. Security for due administration.
7. Power to administer oath.
Penalty for false statements.
8. Deposit when excluded in computing general.
9. Act not to apply to deposits belonging to
soldiers or deserters.

*(Preliminary.)**Deposits belonging to Minors.*

SECTIONS.

10. Payment of deposits to minor or guardian.
11. Legalization of like payments heretofore made.

Deposits belonging to Lunatics.

12. Payment of deposits belonging to lunatics.

Deposits made by Married Women.

13. Payment of married women's deposits.

Rules.

14. Rules regulating certificates under section 8, and payments under section 10, 12 or 13.

 ACT No. V of 1873.¹

[28th January, 1873.]

An Act to amend the Law relating to Government Savings Banks.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows:—

Preliminary.

1. This Act may be called the Government Savings Banks Act, 1873.

It extends to the whole of British India.

[Commencement.] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

¹ For the Statement of Objects and Reasons to the Bill, which was based upon the Trustee Savings Banks Act, 1863 (26 and 27 Vict., c. 87), s. 30, see Gazette of India, 1872, Pt. V, p. 575; for Proceedings in Council, see *ibid*, 1872, Supplement, pp. 727, 743; *ibid*, 1873, Supplement, pp. 150 and 221.

Act V of 1873 has been declared in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Sonthál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. and O. Code, Vol. I, and in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (1 of 1916), s. 2, Bur. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—the Districts of Hazaribagh, Lohárdaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga (now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44) included at this time the District of Palamau, separated in 1894.

It has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code, Vol. I.

(Preliminary Deposits belonging to the Estates of deceased Persons)

2 [Repeal of Act XXVI of 1855] Rep by the Repealing Act, 1873 (XII of 1873)

3 In this Act—

Interpretation clause

“ depositor ” means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank, and “ deposit ” means money so deposited

¹ [“ Secretary ” means, in the case of a Post Office Savings Bank, the Postmaster-General appointed for the area in which the Savings Bank is situate]

² [“ Minor ” means a person who is not deemed to have attained his majority under the Indian Majority Act, 1875]

K of 1875

Deposits belonging to the Estates of deceased Persons

³ [4. If a depositor dies and probate of his will or letters of administration of his estate or a certificate granted under the Succession Certificate Act, 1889, is not within three months of the death of the depositor produced to the Secretary of the Government Savings Bank in which the deposit is, then—

III of 1889

Payment of death of depositor

(a) if the deposit does not exceed three thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, or

(b) if the deposit does not exceed one hundred rupees, any officer employed in the management of a Government Savings Bank, who is empowered in this behalf by a general or special order of the Governor General in Council, may, subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate]

5 Such payment shall be a full discharge from all further liability in respect of the money so paid

Payment to be a discharge.

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration

Saving of right of executor

¹ This was substituted by s 2 of the Government Savings Banks (Amendment) Act 1923 (16 of 1923)

² This definition was substituted by s 2 and Schedule of the Amending Act, 1916 (13 of 1916)

³ This section was substituted by s 3 of the Government Savings Banks (Amendment) Act 1923 (16 of 1923)

(Deposits belonging to the Estates of deceased Persons.)

Right of creditor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act or ¹ Act No. XXVI of 1855,² to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Security for due administration.

6. The Secretary of any such Bank ³[or any officer empowered under section 4] may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid,

and he may assign the said security to any person interested in such administration.

Power to administer oath.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank ³[or any officer empowered under section 4] may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations. X of 1873.

Penalty for false statements.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section 193 of the Indian Penal Code. XLV of 1860

Deposit when excluded in computing court-fees.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed ⁴[three thousand rupees,] such amount shall be excluded in computing the fee chargeable, under the Court-fees Act, 1870, on the probate, or letters of administration, or certificate (if any), granted in respect of his property: ⁵ VII of 1870.

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

Act not to apply to deposits belonging to

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer or soldier dying

¹ The words "the said" were repealed by s. 2 and Sch. I of the Amending Act, 1891 (12 of 1891).

² Act 26 of 1855 was repealed by s. 2 of this Act.

³ These words were added by s. 4 of the Government Savings Bank (Amendment) Act, 1923 (16 of 1923).

⁴ These words were substituted for the words "one thousand rupees" by s. 2 of the Government Savings Banks (Amendment) Act, 1917 (17 of 1917).

⁵ Cf. the Savings Bank Act, 1828 (9 Geo. 4, c. 92), s. 40, now repealed by the Savings Banks Act, 1863 (26 and 27 Vict., c. 87).

(*Deposits belonging to the Estates of deceased Persons* *Deposits belonging to Minors* *Deposits belonging to Lunatics* *Deposits made by Married Women* *Rules*)

in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service

ing to estates of European soldiers or deserters

Deposits belonging to Minors

10 Any deposit made by, or on behalf of, any minor may be paid to him personally if he made the deposit or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon

Payment of deposits to minor or guardian

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor

11 All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law

Legalization of like payments heretofore made

Deposits belonging to Lunatics

12 If any depositor becomes insane or otherwise incapable of managing his affairs,

Payment of deposits belonging to lunatics

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor

Where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager

Deposits made by Married Women

13 Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865,¹ section 4, applies to her marriage, and her receipt for money paid to her under this section shall be a sufficient discharge therefor

Payment of married women's deposits

Rules

14 All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may, from time to time, prescribe²

Rules regulating certificates under section 8 and payments under section 10, 12 or 13.

¹ See now the Indian Succession Act, 1925 (39 of 1925)

² For such rules, see Gazette of India, 1895, Pt I, p 406, and *ibid*, 1897, Supplement, p 153

THE INDIAN OATHS ACT, 1873.

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTIONS.

1. Short title.
Local extent.
2. [*Repealed.*]
3. Saving of certain oaths and affirmations.

II.—Authority to administer Oaths and Affirmations.

4. Authority to administer oaths and affirmations.

III.—Persons by whom Oaths or Affirmations must be made.

5. Oaths or affirmations to be made by—
witnesses:
interpreters:
jurors.
6. Affirmation by Natives or by persons objecting to oaths.

IV.—Forms of Oaths and Affirmations.

7. Forms of oaths and affirmations.
8. Power of Courts to tender certain oaths.
9. Court may ask party or witness whether he will make oath proposed by opposite party.
10. Administration of oath if accepted.
11. Evidence conclusive as against person offering to be bound.
12. Procedure in case of refusal to make oath.

V.—Miscellaneous.

13. Proceedings and evidence not invalidated by omission of oath or irregularity.
14. Persons giving evidence bound to state the truth.
15. Amendment of Penal Code, sections 178 and 181.
16. Official oaths abolished.

SCHEDULE.—[*Repealed.*]

ACT No X of 1873¹

[8th April, 1873]

An Act to consolidate the law relating to Judicial Oaths, and for other purposes

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations, It is hereby enacted as follows:—

I—Preliminary

1. This Act may be called the Indian Oaths Act, 1873

Short title.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native princes and States in alliance with Her Majesty

Local extent.

[Commencement] Rep by the Repealing Act, 1876 (XII of 1876)

¹ For the Statement of Objects and Reasons, see Gazette of India, 1873, Pt V, p 17, for Proceedings in Council, see *ibid*, 1872, Supplement, p 889, *ibid*, 1873, Supplement, pp 3, 233, 235 to 246, 281, 395, and 410, *ibid*, 1873, Extra Supplement, pp 1 to 8

For civil rules of practice made by the High Court of Madras under this Act, the Code of Civil Procedure (Act 14 of 1882) and certain other Acts, for observance by subordinate Civil Courts in that presidency except the Small Cause Court at Madras see Fort St George Gazette, 1905, Suppl, p 1

Act 10 of 1873 has been declared in force in—

the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872) s 3, as amended by the Sonthal Parganas Justice and Laws Regulation 1899 (3 of 1899) B and O Code, Vol I,
the Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (1 of 1916) s 2, Bur Code Vol I,
Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898) s 4 (1) and Sch I, Bur Code Vol I
British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913) s 3, Bal Code,
Angul District (with an exception) by the Angul Laws Regulation, 1913 (3 of 1913) s 3, B and O Code, Vol I,
Pargana of Manpur by the Manpur Laws Regulation, 1926 (2 of 1926), s 2

It has further been declared by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

The Districts of Hazarnagh, Lohardaga and Manhhum, and Pargana Dhalhhum and the Kolhán in the District of Singhm (The District of Lohardaga then included the Palman District, separated in 1894, Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44)

The North Western Provinces and Tanai

The Scheduled Districts in Ganjam and Vizagapatnam

See Gazette of India, 1881 Pt I, p 504

See Gazette of India, 1876, Pt I, p 505

See Fort St George Gazette, 1898, Pt I, p 666, and Gazette of India, 1899, Pt I, p 869

It has been extended, by notification under s 5 of the same Act, to the Scheduled District of Coorg See Gazette of India, 1876, Pt I, p 417

(I.—*Preliminary.* II.—*Authority to administer Oaths and Affirmations.*
III.—*Persons by whom Oaths and Affirmations must be made.*)

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed ¹[by or under any Instruction under the Royal Sign Manual of His Majesty or] by any law which, under the provisions of the Indian Councils Act, 1861,² the Governor General in Council has not power to repeal. ^{24 & 25, V. o. 67.}

Saving of certain oaths and affirmations.

II.—*Authority to administer Oaths and Affirmations.*

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

Authority to administer oaths and affirmations.

(a) all Courts and persons having by law or consent of parties authority to receive evidence;

(b) the Commanding Officer of any military ³[or air force] station occupied by troops in the service of Her Majesty:

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and,

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—*Persons by whom Oaths or Affirmations must be made.*

5. Oaths or affirmations shall be made by the following persons:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence;

Oaths or affirmations to be made by—
witnesses;

¹ These words were inserted by s. 2 of the Indian Oaths (Amendment) Act, 1919 (6 of 1919).

² Repealed by the Government of India Act (5 & 6 Geo. 5, c. 61) which has re-enacted its provisions.

³ These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

(III.—Persons by whom Oaths and Affirmations must be made. IV.—Forms of Oaths and Affirmations.)

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors.

jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

Affirmation by Natives or by persons objecting to oaths.

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.¹

Forms of oaths and affirmations.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

* * * * *

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Power of Court to tender certain oaths.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Court may ask party or witness whether he will make oath proposed by opposite party.

¹ For forms prescribed in different provinces, see different local rules and orders.

² The explanation to section 7 was repealed by s. 48 and Sch. 2 of the Lower Burma Courts Act, 1900 (6 of 1900).

(IV.—Forms of Oaths and Affirmations. V.—Miscellaneous.)

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administra-
tion of oath
if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence
conclusive as
against per-
son offering
to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Procedure
in case of
refusal to
make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

Proceedings -
and evidence
not invalid-
ated by omis-
sion of oath
or irregular-
ity.

13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons
giving
evidence
bound to
state the
truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.¹

Amendment
of Penal
Code, sec-
tions 178
and 181.

15. The Indian Penal Code, sections 178 and 181, shall be construed XLV of 1 as if, after the word "oath," the words "or affirmation" were inserted.

Official
oaths
abolished.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

SCHEDULE.

[Rep. by the Repealing Act, 1873 (XII of 1873).]

¹ Cf. the Indian Penal Code (Act 45 of 1860), s. 191.

ACT No. III of 1874.¹

[24th February, 1874.]

An Act to explain and amend the law relating to certain married women, and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurance on lives by persons married before or after that day -

And whereas by the Indian Succession Act, 1855,² section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become liable for doing any act in respect of his or her own property, which he or she could have done, if unmarried:

And whereas by force of the said Act it was so, in which marriage it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by such marriage acquire any interest in such property, but the wife does not become liable for doing any act in respect of her own property, which she could have done, if unmarried, and does not become liable for doing any act in respect of her own property, which she could have done, if unmarried, and does not become liable for doing any act in respect of her own property, which she could have done, if unmarried:

It is hereby enacted -

Enacted -

1. This Act may be cited as the Married Women's Property Act, 1874.

2. It is hereby enacted that every woman who is married before the first day of January, 1866, shall, notwithstanding anything in any Act or in any instrument in writing, be deemed to be the absolute owner of all property vested in, or acquired by, her, and her husband shall not by such marriage acquire any interest in such property, but the wife shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried, and shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried, and shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried:

¹ For the Amendment of the Indian Succession Act, 1855, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become liable for doing any act in respect of his or her own property, which he or she could have done, if unmarried:

The Indian Succession Act, 1855, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become liable for doing any act in respect of his or her own property, which he or she could have done, if unmarried:

The Indian Succession Act, 1855, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become liable for doing any act in respect of his or her own property, which he or she could have done, if unmarried:

It is hereby enacted that every woman who is married before the first day of January, 1866, shall, notwithstanding anything in any Act or in any instrument in writing, be deemed to be the absolute owner of all property vested in, or acquired by, her, and her husband shall not by such marriage acquire any interest in such property, but the wife shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried, and shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried, and shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried:

The Indian Succession Act, 1855, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become liable for doing any act in respect of his or her own property, which he or she could have done, if unmarried:

The Indian Succession Act, 1855, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become liable for doing any act in respect of his or her own property, which he or she could have done, if unmarried:

It is hereby enacted that every woman who is married before the first day of January, 1866, shall, notwithstanding anything in any Act or in any instrument in writing, be deemed to be the absolute owner of all property vested in, or acquired by, her, and her husband shall not by such marriage acquire any interest in such property, but the wife shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried, and shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried, and shall not become liable for doing any act in respect of her own property, which she could have done, if unmarried:

The Indian Succession Act, 1855, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become liable for doing any act in respect of his or her own property, which he or she could have done, if unmarried:

The Indian Succession Act, 1855, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become liable for doing any act in respect of his or her own property, which he or she could have done, if unmarried:

(I.—Preliminary. II.—Married Women's Wages and Earnings.
III.—Insurances by Wives and Husbands.)

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the "[Local Government]" may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The "[Local Government]" may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the "[local official Gazette]."

* * * * *

X of 1863

3. [*Commencement.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

II.—Married Women's Wages and Earnings.

Married women's earnings to be their separate property. 4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

III.—Insurance by Wives and Husbands.

Married woman may effect policy of insurance. 5. Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

¹ These words were substituted for the words "Governor General in Council" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² These words were substituted for the words "Gazette of India", *ibid.*

³ The last paragraph of s. 2 was omitted by s. 392, Sch. 9 of the Indian Succession Act, 1925 (39 of 1925).

⁴ Cf. the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 1, now repealed by the Married Women's Property Act, 1882 (45 and 46 Vict., c. 75).

⁵ Cf. the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 10, para. 1.

(III—*Insurances by Wives and Husbands* IV—*Legal Proceedings by and against Married Women*)

16. ²[(1)] A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate

Insurance by husband for benefit of wife

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No XVII of 1864 (*to constitute an Office of Official Trustee*), section 10

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors

³[(2)] Notwithstanding anything contained in section 2, the provisions of sub-section (1) shall apply in the case of any policy of insurance such as is referred to therein which is effected by any Hindu, Muhammadan, Sikh or Jain, in Madras after the thirty-first day of December, 1913, or in any other part of British India after the first day of April, 1923

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed before the first day of April, 1923]

IV—*Legal Proceedings by and against Married Women*

47. A married woman may maintain a suit in her own name for the recovery of property of any description which by force of the said Indian Succession Act, 1865,⁵ or of this Act, is her separate property, and she shall have, in her own name, the same remedies, both civil and

Married women may take legal proceedings

¹ *Of* the Married Women's Property Act, 1870 (33 and 34 Vict., c 93), s 10, para 2

² Re numbered by s 2 of the Married Women's Property (Amendment) Act, 1923 (13 of 1923)

³ Added by s 2, *ibid*

⁴ *Of* the Married Women's Property Act, 1870 (33 and 34 Vict., c 93), s 11, now repealed by the Married Women's Property Act, 1882 (45 and 46 Vict., c 75).

⁵ See now the Indian Succession Act, 1925 (39 of 1925)

(IV.—*Legal Proceedings by and against Married Women.* V.—*Husband's liability for Wife's debts.* VI.—*Husband's liability for Wife's breach of trust or devastation.*)

criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

Wife's
liability for
postnuptial
debts.

8. If a married woman (whether married before or after the first day of January, 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree:

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied

V.—Husband's liability for Wife's debts.

Husband
not liable for
wife's
antenuptial
debts.

² 9. A husband married after the thirty-first day of December, 1865, shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried:

Proviso.

Provided that nothing contained in this section shall * * * *³ invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's antenuptial debts.

⁴[VI.—*Husband's liability for Wife's breach of trust or devastation.*

Extent of
husband's
liability for
wife's breach
of trust or
devastation.

10. Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased.]

¹ The words "or render a married woman liable to arrest or to imprisonment in execution of a decree," were repealed by s. 9 of the Debtors Act, 1888 (6 of 1888).

² Cf. the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 12.

³ The words "affect any suit instituted before the passing of this Act, nor" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

⁴ This heading and s. 10 were inserted by s. 3 of the Indian Succession (Amendment) Act, 1927 (18 of 1927).

ACT No IV or 1874¹

[24th February, 1874]

An Act to control recruiting in British India for the service of Foreign States

WHEREAS it is expedient that the Governor General in Council should exercise full control over recruiting in British India for the service of Foreign States, It is hereby enacted as follows —

Preamble.

Short title

Local extent.

'Foreign State' defined.

Power to prohibit or permit recruiting.

Power to impose conditions

Power to rescind or vary orders

1 This Act may be called the Foreign Recruiting Act, 1874

It extends to the whole of British India

[Commencement] *Rep by the Repealing Act, 1876 (XII of 1876)*

2 In this Act—

'Foreign State' includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of British India

3. If any person is, within the limits of British India, obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the Governor General in Council may, by order in writing signed by a Secretary to the Government of India, either prohibit such person from so doing, or permit him to do so subject to any conditions which the Governor General in Council thinks fit to impose

4 The Governor General in Council may from time to time, by general order notified in the Gazette of India, either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which he thinks fit

5 The Governor General in Council may rescind or vary any order made under this Act in such manner as he thinks fit

¹ For the Statement of Objects and Reasons, see Gazette of India, 1874 Pt V, p 1, for Proceedings in Council, see *ibid*, 1873, Supplement, p 1300, *ibid*, 1874, Supplement, pp 12 and 240

This Act has been declared in force in—

Upper Burma generally (except the Shan States) by s 4 (1) and Sch 1 of the Burma Laws Act, 1898 (13 of 1898), Bur Code Vol I, the Arakan Hill District, see s 2 and Schedule to the Arakan Hill District Laws Regulation, 1916, *ibid*, British Baluchistan, see the Baluchistan Laws Regulation, 1913 (2 of 1913), s 3, Bal Code

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

the Districts of Hazárbagh, Lohárdaga and Mánbhum, and Pargana Dhál-bhnm and the Kolán in the District of Singbhum, see Gazette of India, 1831, Pt I p 504 The District of Lohárdaga included at this time the Palamau District, which was separated in 1894, Lohárdaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt I, p 44

It has been extended, by notification under s 5 of the same Act, to the Scheduled District of the North Western Provinces Tará, see Gazette of India, 1876, Pt I, p 63

The Foreign Enlistment Act, 1870 (33 and 34 Vict, c 90), applies only when the recruiting is for the service of any foreign State at war with any foreign State at peace with Her Majesty

Offences.

6. Whoever, in violation of the prohibition of the Governor General in Council, or of any condition subject to which permission to recruit may have been accorded,—

(a) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State, or

(b) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever,

shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both.

Place of trial.

7. Any offence against this Act may be inquired into and tried, as well in any district in which the person accused may be found, as in any district in which it might be inquired into and tried under the provisions of the Code of Criminal Procedure.¹

THE EUROPEAN VAGRANCY ACT, 1874.

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Repeal of Acts.
3. Interpretation clause.

PART II.

PROCEDURE.

4. Power to require apparent vagrant to go before Magistrate.
5. Summary inquiry into vagrant's circumstances.
Declaration of vagrancy.
Order to go to workhouse.
6. Forwarding vagrant to place of employment.
7. Assistance to obtain employment.

¹ See now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

SECTIONS

- 8 Subsistence allowance
- 9 Power to give certificates
Form of certificate
- 10 Power to invest certain officials with jurisdiction of justices under
sections 5, 7, 8 and 9

PART III

GOVERNMENT WORKHOUSES

- 11 Provision of Government workhouses
Scale of diet
- 12 Superintendence of workhouses
- 13 Search of vagrants
- 14 Discipline
- 15 Refusal to accept employment

PART IV

REMOVAL FROM INDIA

- 16 Removal of vagrants
Cost of removal
- 17 Agreements with vagrants
Form of agreement
- 18 Power to perform agreement

PART V

PENALTIES

- 19 Refusal to go before Magistrate
Assaulting police
- 20 Escaping from police
Quitting workhouse without leave
Failing to return to workhouse
- 21 Failing to proceed to port of embarkation
Refusing to go on boardship
Escaping from ship
- 22 Returning to India
- 23 Begging
- 24 Procedure on close of imprisonment
- 25 Penalty on shipmaster bringing European convicts to India
Power to exempt certain shipmasters
- 26 Payment of fines
- 27 Prosecutions
- 28 Limits of jurisdiction
- 29 Validity of proceedings when Magistrate is not the nearest

PART VI.

MISCELLANEOUS.

SECTIONS.

30. Deprivation of privileges of European British subjects under Criminal Procedure Code.
31. Liability of importers of Europeans or employers of soldiers becoming vagrants.
Recovery of charges.
32. Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.
"Consignee" defined.
"Agent" defined.
33. Evidence of declaration under section 5.
34. Exercise of powers conferred on Local Government.
35. Exercise in Native States of powers conferred on Magistrates and Police.
36. Power to make rules for guidance of officers.

THE FIRST SCHEDULE.—FORM OF CERTIFICATE.

THE SECOND SCHEDULE.—FORM OF AGREEMENT.

ACT No. IX of 1874.¹

[7th April, 1874.]

An Act to consolidate and amend the Law relating to European Vagrancy.

Preamble. WHEREAS it is expedient to consolidate and amend the laws relating

¹ For the Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 399; for Proceedings in Council, *see* *ibid*, 1874, Extra Supplement, August 23rd, pp. 10 and 14; *ibid*, 1874, Supplement, pp. 323 and 412.

This Act has been declared in force in—

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. 1, Bur. Code, Vol. I;
 Angul and the Khondmals by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. & O. Code, Vol. I;
 British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code;
 the Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (11 of 1916), s. 2, Bur. Code, Vol. I.

It has been declared in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872) as amended by the Sonthál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code, Vol. I.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

the Districts of Hazáribágh, Lohardaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The Lohárdaga District at this time included the Palamau District; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

to persons of European extraction who wander in a destitute condition throughout India. It is hereby enacted as follows —

PART I

PRELIMINARY

1 This Act may be called the European Vagrancy Act, 1874

Short title

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty, Local extent.

And it shall come into force at once. Provided that sections 4 to 16 (both inclusive), 19, 20, 24 and 29,¹ shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant Governorship or Chief Commissionership in British India, until such day or respective days ^{Commence ment.} [as in the case of Coorg and the said Islands the Local Government by notification in the local official Gazette, and in the case of any of the said dominions, the Governor General in Council by notification in the Gazette of India, from time to time, appoints in this behalf.]

²[Provided, further, that in the case of any of the said dominions which is within the political charge of a Local Government, the power conferred on the Governor General in Council by this section shall be exercised by that Local Government by notification in the local official Gazette.]

2 Acts No XXI of 1869 (to provide against European Vagrancy) and No XXVIII of 1871 (to amend the European Vagrancy Act, 1869,) ^{Repeal of Acts} are hereby repealed

But all appointments and orders made, workhouses provided, certificates given, powers conferred, rules prescribed and exemptions granted under the former Act shall be deemed to have been respectively made, provided, given, conferred, prescribed and granted under this Act

It has been extended by notification under s 5 of the same Act, to the Scheduled District of the North Western Provinces Tarai, see Gazette of India, 1876, Pt I, p 505, and to Ganjam and Vizagapatnam, see Port St George Gazette, 1899, Pt I, p 1140

¹ These sections have been extended to the Native States within the limits of—

- (1) The Madras Presidency, see Gazette of India, 1870, Pt I, p 723,
- (2) The Lower Provinces of Bengal, t I, p 723,
- (3) The Central India Agency, s p 552,
- (4) The Punjab see Gazette of I
- (5) they have also been extend

India, 1890, Pt I, p 527

Gazette of

² These words were substituted for the words "as the Governor General in Council from time to time by notification in the Gazette of India, appoints, in this behalf by s 2 and Sch 1 of the Devolution Act 1920 (33 of 1920)

³ This proviso was added, 1914

(Part I.—Preliminary. Part II.—Procedure.)

Interpretation
clause.
"Person of
European
extraction."

3. In this Act—

"person of European extraction" includes—

(a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape Colony;

(b) the sons and grandsons of such persons;

but does not include persons commonly called Eurasians or East Indians:

"Vagrant."

"vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence:

"Master of
a ship."

"master of a ship" includes any person in charge of a decked vessel:

"Magistrate."

and in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police² and, outside those limits, a person exercising powers under the Code of Criminal Procedure³ not less than those of a Magistrate of the second class.

PART II.

PROCEDURE.

Power to
require ap-
parent
vagrant to go
before Magis-
trate

4. Any police-officer may, within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other police-officer to, and to appear before, the nearest Magistrate of Police² and may, without those limits, require any such person to accompany him or any other police-officer to, and to appear before, ¹[the nearest magistrate of the first class].

Summary
inquiry into
vagrant's cir-
cumstances.
Declaration
of vagrancy.

5. The Magistrate of Police² or ¹[Magistrate of the first class] shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Order to go
to work-
house.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect.

¹ Cf. definition of "European British subject" in the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 4 (1) (i).

² Read now "Presidency Magistrate," see Act 5 of 1898, s. 3.

³ See now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

⁴ These words were substituted for the words "the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure" by s. 35 of the Criminal Law Amendment Act, 1923 (12 of 1923).

⁵ These words were substituted for the word "Justice" by s. 36, *ibid*.

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the workhouse, and the said order shall be a sufficient authority to the police for retaining him in their charge while he is on his way to the workhouse, and to the Governor of the workhouse for receiving and detaining such vagrant

6 Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section 1) in any place subject to any adjacent Local Government such officer may in his discretion forward the vagrant to such place in charge of the police, and draw up an order to that effect

Forwarding
vagrant to
place of
employment

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment

7 Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police¹ or "[Magistrate of the first class]" to whom the order for transmission shall be delivered

Assistance to
obtain em-
ployment

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the police

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government workhouse in the manner provided by section 5

8 Every person while in charge of the police, whether before inquiry as to his vagrancy, or while he is on his way, under section 5, to the workhouse or under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem

Subsistence
allowance

The Magistrate of Police¹ or "[Magistrate of the first class]" before whom any vagrant is taken under section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct

9 Any Magistrate of Police¹ or "[Magistrate of the first class]" may, on being satisfied that any person of European extraction is not likely to

Power to
give certi-
ficates

¹ Read now "Presidency Magistrate, sec 3 of the Code of Criminal Procedure, 1893 (Act 5 of 1894)

² These words were substituted for the words "Justice of the Peace exercising powers as aforesaid" by s 37 of the Criminal Law Amendment Act 1923 (12 of 1923)

³ These words were substituted for the word "Justice" by s 36, *ibid*

(Part II.—*Procedure.* Part III.—*Government Workhouses.*)

become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections 4, 5, 6 and 7 shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections 4, 5, 6 and 7 shall apply to such person within such limits as aforesaid.

Form of
certificate.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

Power to in-
vest certain
officials with
jurisdiction
of Justices
under
sections 5,
6, 8 and 9.

10. The Local Government may from time to time, by notification in the official Gazette,¹ invest any ²* * * District Superintendent of Police or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a ³[Magistrate of the first class].

PART III.

GOVERNMENT WORKHOUSES.

Provision of
Government
workhouse.

11. The Local Government * * * may provide⁵ workhouses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants;

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a workhouse under the former part of this section, to be fit for a workhouse for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government workhouse under this Act.

Scale of diet.

The Local Government shall allow the same scale of diet for the support of vagrants received in such workhouses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

¹ For instance of such notification, see Mad. R. & O.

² The words "Justice of the Peace" were omitted by s. 37 of the Criminal Law Amendment Act, 1923 (12 of 1923).

³ These words were substituted for the words "Justice of the Peace exercising powers as aforesaid" by s. 37, *ibid.*

⁴ The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Part I of the Schedule of the Decentralization Act, 1914, (4 of 1914).

⁵ For notifications issued under the powers conferred by this section, see different local rules and orders.

(Part III—Government Workhouses)

12 Every such workhouse shall be under the immediate charge of a Superintendent, Governor, who shall be appointed, and may be suspended or removed, by the Local Government Superintendence of workhouses

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government or, in the absence of a committee, to the orders of such officer as the Local Government from time to time appoints in this behalf

13 Every such Governor may order that any vagrant admitted to the workhouse under his charge shall be searched and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders Search of vagrants;

14 Vagrants admitted to workhouses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by the Local Government Discipline

The Local Government may authorize any Governor of a workhouse to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely) —

- (a) solitary confinement within the workhouse for any time not exceeding seven days,
- (b) solitary confinement within the workhouse for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe,⁵
- (c) hard labour for any time not exceeding seven days,
- (d) reduction of diet to such extent as the Local Government may prescribe⁵ for any time not exceeding five days,

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months

¹ For notifications issued under the powers conferred by this section, see different local rules and orders.

² For notifications prescribing such rules see different local rules and orders

³ The words "subject to the control of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act 1920 (33 of 1920)

⁴ For notifications conferring such authority in—

Burma

see Bur. R. M.

Madras

see Mad. R. & O.

⁵ For instance of such notification see Bur. R. M.

(Part III.—Government Workhouses. Part IV.—Removal from India.)

Refusal to
accept em-
ployment.

15. The Governor and the Committee of Management (if any) of every such workhouse shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

Removal of
vagrants.

16. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government;

Cost of
removal.

or it may cause sections 23 and 30 to be read to him and may then release him.

Agreement
with
vagrants.

17. Any vagrant or other person of European extraction may enter into an agreement¹ in writing with the Secretary of State for India in Council binding himself—

- (a) to proceed to such port in British India as shall be mentioned in the agreement;
- (b) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;
- (c) to remain on board such ship until she has arrived at her port of destination; and
- (d) not to return to India until five years have elapsed from the date of such embarkation.

Form of
agreement.

Every such agreement shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

¹ For notification requiring that the Commissioner of Police and Justices of the Peace do obtain Government sanction before concluding an agreement with any vagrant, see *Mad. R. & O.*

² The words "may be on unstamped paper and" were repealed by the Indian Stamp Act, 1879 (1 of 1879), which exempted these agreements from stamp duty; see now, however, the Indian Stamp Act, 1899 (2 of 1899).

18 The Local Government of the territories in which the said port is situate may enter into such contracts for conveyance or otherwise and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council

Power to perform agreement

PART V

PENALTIES

19 Any person refusing or failing to accompany a police officer to, or to appear before, a Magistrate of Police¹ or ²[Magistrate of the first class] for the purpose of preliminary inquiry when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both

Refusal to go before Magistrate

And any person who, when required under section 4 to accompany a police officer to, or to appear before, a Magistrate of Police¹ or ²[Magistrate of the first class] commits an offence punishable under section 358 of the Indian Penal Code, may, whether he be or he not a European British subject, be tried by a Magistrate for such offence

Assaulting police

20 Any vagrant who escapes from the police while committed to their charge under the orders specified in sections 5 and 6

Escaping from police

or, who leaves a workhouse under this Act, without permission from the Governor,

Quitting workhouse without leave

or who having with such permission left a workhouse for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

Failing to return to workhouse

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years

21 Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned,

Failing to proceed to port of embarkation

or refusing to embark when directed so to do under the same section,

Refusing to go on board ship

or escaping from the ship in which he has so embarked before she has reached her port of destination,

Escaping from ship

¹ Read now ' Presidency Magistrate ' see s 3 of the Code of Criminal Procedure 1893 (Act 5 of 1893)

² The words were substituted for the words " Justice of the Peace " by s 33 of the Criminal Law Amendment Act 1923 (12 of 1923)

shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Returning to
India.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Procedure on
close of im-
prisonment.

24. Every person imprisoned under section 19, 20, 21, 22 or 23 shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police¹ or ²[Magistrate of the first class] who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

The order of transmission shall certify the fact of the previous conviction.

Penalty on
shipmaster
bringing
European
convicts to
India.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due inquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

¹ Read now "Presidency Magistrate," see s. 3 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

² These words were substituted for the words "Justice of the Peace exercising powers as aforesaid" by s. 37 of the Criminal Law Amendment Act, 1923 (12 of 1923).

The Governor General in Council may from time to time, by notification in the Gazette of India, exempt¹ from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor General in Council seem fit, and either in respect of all or of any of the persons on board such ships

Power to exempt certain ship masters

The Governor General in Council may in like manner revoke any exemption made under this section

26² * * * * *

All fines recovered under this Act shall be paid to the credit of the ³[Governor, Lieutenant-Governor or Chief Commissioner of the Province concerned] or as the ⁴[Local Government] from time to time directs

Payment of fines

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf⁵

Prosecutions

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure⁶ in the case of offenders not being European British subjects

Limits of jurisdiction

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police⁷ or ⁸[Magistrate of the first class] before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24 was not the nearest

Validity of proceedings where Magistrate is not the nearest

PART VI

MISCELLANEOUS

30. Any European British subject who, upon the summary inquiry mentioned in section 5, has been determined to be a vagrant, or who has

Deprivation of privileges of European

¹ For notification issued under the powers conferred by s 25 of Act 21 of 1869, which is kept in force by s 2 of this Act, see Gazette of India 1870, Pt I, p 723

² The first paragraph of s 26 (Recovery of fines) was repealed by the Repealing and Amending, Act, 1914 (10 of 1914)

and ³ for the word "Government of India" by s 2 1920 (35 of 1920)

⁴ or the words "Governor General in Council" by the powers conferred by this section in—

(1) Bombay see Bom R & O,

(2) Burma see Bur R M,

(3) Madras see Mad R & O,

(4) Central Provinces see C P R and O

⁵ See now Act 5 of 1893

⁶ Read now "Presidency Magistrate," see s 3 (2) of the Code of Criminal Procedure, 1893 (Act 5 of 1893)

⁷ These words were substituted for the word "Justice" by s 36 of the Criminal Law Amendment Act 1923 (12 of 1923)

shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Returning to
India.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Procedure on
close of im-
prisonment.

24. Every person imprisoned under section 19, 20, 21, 22 or 23 shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police¹ or ²[Magistrate of the first class] who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

The order of transmission shall certify the fact of the previous conviction.

Penalty on
shipmaster
bringing
European
convicts to
India.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due inquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

¹ Read now "Presidency Magistrate," see s. 3 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

² These words were substituted for the words "Justice of the Peace exercising powers as aforesaid" by s. 37 of the Criminal Law Amendment Act, 1923 (12 of 1923).

The Governor General in Council may from time to time, by notification in the Gazette of India, exempt¹ from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor General in Council seem fit, and either in respect of all or of any of the persons on board such ships

Power to exempt certain ship masters

The Governor General in Council may in like manner revoke any exemption made under this section

26² * * * * *

All fines recovered under this Act shall be paid to the credit of the ^{Payment of} Governor, Lieutenant-Governor or Chief Commissioner of the Province ^{fines} concerned] or as the [Local Government] from time to time directs

27. All prosecutions under this Act may be instituted and conducted ^{Prosecutions} by such officer as the Local Government from time to time appoints in this behalf³

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure⁴ in the case of offenders not being European British subjects ^{Limits of jurisdiction}

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police⁵ or [Magistrate of the first class] before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24 was not the nearest. ^{Validity of proceedings where Magistrate is not the nearest}

PART VI

MISCELLANEOUS

30. Any European British subject who, upon the summary inquiry mentioned in section 5, has been determined to be a vagrant, or who has ^{Deprivation of privileges of European}

¹ For notification issued under the powers conferred by s 25 of Act 21 of 1869, which is kept in force by s 2 of this Act, see Gazette of India, 1870, Pt I, p 723

and ^{fines} was repealed by the Repealing Act of 1920

and ^{de "Government of India" by s 2} "Governor General in Council" by

s 2 and Sch 1, *ibid*

² For notifications issued under the powers conferred by this section in—

(1) Bombay see Bom R & O,

(2) Burma see Bur R M,

(3) Madras see Mad R & O,

(4) Central Provinces see C P R and O

³ See now Act 5 of 1893

⁴ Read now "Presidency Magistrate," see s 3 (2) of the Code of Criminal Procedure, 1893 (Act 5 of 1893)

⁵ These words were substituted for the word "Justice" by s 36 of the Criminal Law Amendment Act 1923 (12 of 1923)

British subjects under Criminal Procedure Code.

been convicted under section 22 or section 23, shall, so long as he remains in India, be subject to the provisions of the Code of Criminal Procedure² applicable to a European not being a British subject.

4*

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates who, if this Act had not been passed, would have had no such jurisdiction.

Liability of importers of Europeans or employers of soldiers becoming vagrants.

31. Whenever any person of European extraction lands in India, or being a non-commissioned officer or soldier in Her Majesty's Army leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,

and whenever a sailor of European extraction not being a British subject is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner or agent chargeable.

Liability of consignees in case of Europeans who arrive in charge of animals and become vagrants.

32. When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then

the consignee of such animal,

or the agents in India for the sale of such animal,

or, if such consignee or agents cannot be found, the agent to whom the ship in which such animal arrived in India was consigned,

¹ The words "beyond the limits of the said town" were omitted by s. 39 of the Criminal Law Amendment Act, 1923 (12 of 1923).

² See now Act 5 of 1898.

³ The words "(other than those contained in Chapter XXXVIII of the same Code)" were omitted by s. 39 of the Criminal Law Amendment Act, 1923 (12 of 1923).

⁴ Paragraph 2 of s. 30 was omitted by s. 39, *ibid*.

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section

For the purposes of this section "consignee" includes any person who undertakes to dispose of such animal for the benefit of the consignor, and "Consignee" defined.

"agent" includes any person who undertakes the agency of such ship, though it may not have been consigned to him "Agent" defined.

33 In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *prima facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant Evidence of declaration under section 5

34 The powers and duties conferred and imposed by sections 16 and 18 on a Local Government may be exercised and performed by such class of officers as the Local Government¹ from time to time, by notification in the official Gazette, appoints in this behalf Exercise of powers conferred on Local Government

35. The powers and duties conferred and imposed by this Act on Magistrates * * * * and police-officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor General in Council from time to time, by notification in the Gazette of India appoints in this behalf Exercise in Native States of powers conferred on Magistrates and Police

²[Provided that, in the case of any such place which is within the political charge of a Local Government, the power conferred on the Governor General in Council by this section shall be exercised by that Local Government by notification in the local official Gazette]

36. The Local Government * * * * may from time to time make rules,³ consistent with this Act, for the guidance of officers in matters connected with its enforcement Power to make rules for guidance of officers.

All such rules shall be published in the "[local official Gazette] and shall thereupon have the force of law.

¹ For notifications making such directions, see different local rules and orders

² The words "Justices of the Peace exercising the powers of a Magistrate of the first Class" were omitted by s 40 of the Criminal Law Amendment Act, 1923 (12 of 1923)

³ This proviso was added by s 2 and Sch I of the Devolution Act, 1920 (34 of 1920)

The words "subject to the control of the Governor General in" were omitted by s 2 and Sch I, *ibid*

⁴ For such rules, see different local rules and orders

⁵ These words were substituted for the words "Gazette of India" the Schedule of the Decentralization Act, 1914 (4 of 1914)

THE FIRST SCHEDULE.

(*See section 9.*)

Whereas *E. F.* of _____, a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of _____ months from the date hereof and within the Province [or District] of _____ nothing in sections 4, 5, 6 and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) *G. H.*,

Dated this _____ day
of _____ 18 .

Magistrate of Police¹ for the town of
or ²[Magistrate of the first
class.]

THE SECOND SCHEDULE.

(*See section 17.*)

ARTICLES OF AGREEMENT made this _____ day of _____ 18
BETWEEN the Secretary of State for India in Council of the one part and
C. D. of, etc., [*the vagrant*] of the other part; Each of the parties hereto
(so far as relates to the acts on his own part to be performed) hereby
agrees with the other of them as follows:—

1. The said *C. D.* shall proceed forthwith to the port of [*the port of embarkation*].

2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C. D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

¹ Read now "Presidency Magistrate," see s. 3 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

² These words were substituted for the words "Justice of the Peace for exercising the powers of a Magistrate of the _____ class" by s. 41 of the Criminal Law Amendment Act, 1923 (12 of 1923).

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship, or his agent, for the passage of the said *C. D.* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A. B.* by order of the Governor General of India in Council [or the Governor of in Council or the Lieutenant-Governor of , or the Chief Commissioner of], on behalf of the said Secretary of State in Council, and the said *C. D.* have hereunto set their hands the day and year first above written.

THE SCHEDULED DISTRICTS ACT, 1874.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
Local extent.
Interpretation clause.
2. Repeal of enactments.
3. Notification of enactments in force in Scheduled Districts.
4. Effect of notification under section 3.
5. Power to extend enactments to Scheduled Districts.
- 5A. Modification of enactments in their application to Scheduled Districts.
6. Appointment of officers and regulation of their procedure.
7. Continuance of existing rules and officers.
8. Settlement of questions as to boundary.
9. Place of imprisonment or transportation.
10. Extension to Satná strip of Acts relating to public gambling and salt.
11. Saving of criminal jurisdiction over European British subjects and saving of other laws.

SCHEDULES.

THE FIRST SCHEDULE.

- PART I.—SCHEDULED DISTRICTS. MADRAS.
 „ II.—SCHEDULED DISTRICTS, BOMBAY.
 „ III.—SCHEDULED DISTRICTS, BENGAL.
 „ IV.—SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.
 „ V.—SCHEDULED DISTRICTS, PUNJAB.
 „ VI.—SCHEDULED DISTRICTS, CENTRAL PROVINCES.
 „ VII.—THE CHIEF COMMISSIONERSHIP OF COORG.
 „ VIII.—THE CHIEF COMMISSIONERSHIP OF THE ANDAMAN AND NICOBAR ISLANDS.
 „ IX.—THE CHIEF COMMISSIONERSHIP OF AJMER AND MERWARA.
 „ X.—THE CHIEF COMMISSIONERSHIP OF ASSAM.
 „ XI.—THE HILL TRACTS OF ARAKAN.
 „ XII.—THE PARGANA OF MANPUR.
 „ XIII.—[*Repealed.*]

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

ACT No. XIV OF 1874.¹

[8th December, 1874.]

An Act to ascertain the enactments in force in various parts of British India, and for other purposes.

Preamble.

WHEREAS various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature;

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts: And whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein;

¹ For Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V, p. 36; for Proceedings in Council, see *ibid.*, 1870, Supplement, pp. 187, 474 and 522; *ibid.*, 1872, Supplement, p. 377; *ibid.*, 1873, Supplement, p. 373; *ibid.*, 1874, Supplement, pp. 1885 and 1976.

And whereas it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satna and the eastern boundary of the Jahalpur Division,

It is hereby enacted as follows —

1 This Act may be called the Scheduled Districts Act, 1874

Short title

This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule hereto annexed, and it shall come into force in each of the Scheduled Districts¹ on the issue of a notification under section 3 relating to such district

Local extent

In this Act the term "Scheduled Districts" means the territories mentioned in the first schedule hereto annexed, and, from the date fixed in the resolution next hereinafter mentioned, it shall also include any other territory² to which the Secretary of State for India, by resolution in Council, may declare the provisions of the 33rd of Victoria,³ chapter 3, section 1, to be applicable

Interpretation clause

2 The enactments mentioned in the second schedule hereto annexed shall be repealed

Repeal of enactments

3 The Local Government may, from time to time, by notification in the local Gazette —

Notification of enactments in force in Scheduled Districts

- declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such district,
- declare of any enactment that it is not actually in force in any of the said districts or in any part of any such district,
- correct any mistake of fact in any notification issued under this section

Provided that a declaration once made under clause (a) or clause (b) of this section shall not be altered by any subsequent declaration other than a declaration under clause (c) of this section

¹ For list of Scheduled Districts in which the Act has been brought into force see Appendix A

The Act has been declared to be in force by Legislative enactments in the following places —

Arakan Hill District, by Regulation I of 1916 s 2,
Upper Burma (except the Shan States) by Act VIII of 1898, s 4,
Angul District, by Regulation III of 1913, s 3
British Baluchistan by Regulation II of 1913, s 3
Laccadive Islands and Minicoy by Regulation I of 1912 s 3,
Talúqs of Nugur, Albaka and Cheri, by Regulation I of 1909, s 2 (as one of the enactments in force in the Pargana of Manpur by the Manpur
For list of such territories, see Appendix A
Tappu Chaurasi in the Mizipur District
Gill see Gazette of India, 1874 Pt I p
² Short title, the Government of India Act 1858
as amended by the Government of India Act (5 and 6) 1859
³ The words "with the previous sanction of the Governor-General in Council" were repealed by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)
⁴ For notifications bringing the Act into force in Scheduled Districts, see Appendix A to this Act, *infra*
⁵ The words "in the Gazette of India and also" were repealed by s 2 and Sch I of the Devolution Act 1920 (38 of 1920)
⁶ The words "(if any)" were repealed *ibid*

SCHEDULES.

THE FIRST SCHEDULE.

- PART I.—SCHEDULED DISTRICTS, MADRAS.
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 „ III.—SCHEDULED DISTRICTS, BENGAL.
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 „ VI.—SCHEDULED DISTRICTS, CENTRAL PROVINCES.
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 „ VIII.—THE CHIEF COMMISSIONERSHIP OF THE ANDAMAN AND NICOBAR ISLANDS.
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And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts: And whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein;

¹ For Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V, p. 36; for Proceedings in Council, see *ibid.*, 1870, Supplement, pp. 187, 474 and 522; *ibid.*, 1872, Supplement, p. 377; *ibid.*, 1873, Supplement, p. 373; *ibid.*, 1874, Supplement, pp. 1885 and 1976.

And whereas it is expedient to declare that certain Acts are in force on a tract of land lying between the Railway Station at Satná and the eastern boundary of the Jabalpur Division;

It is hereby enacted as follows:—

1. This Act may be called the Scheduled Districts Act, 1874.

Short title

This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule hereto annexed, and it shall come into force in each of the Scheduled Districts¹ on the issue of a notification under section 3 relating to such district

Local extent

In this Act the term "Scheduled Districts" means the territories mentioned in the first schedule hereto annexed; and, from the date fixed in the resolution next hereinafter mentioned, it shall also include any other territory² to which the Secretary of State for India, by resolution in Council, may declare the provisions of the 33rd of Victoria,³ chapter 3, section 1, to be applicable.

Interpretation clause

2. The enactments mentioned in the second schedule hereto annexed shall be repealed.

Repeal of enactments

3. The Local Government⁴ may, from time to time, by notification⁵ in the local Gazette⁶—

Notification of enactments in force in Scheduled Districts

(a) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such district,

(b) declare of any enactment that it is not actually in force in any of the said districts or in any part of any such district,

(c) correct any mistake of fact in any notification issued under this section:

Provided that a declaration once made under clause (a) or clause (b) of this section shall not be altered by any subsequent declaration other than a declaration under clause (c) of this section.

¹ For list of Scheduled Districts in which the Act has been brought into force, see Appendix A

The Act has been declared to be in force by Legislative enactments in the following places—

Arahan Hill District, by Regulation I of 1916, s. 2,

Upper Burma (except the Shan States), by Act XIII of 1893, s. 4,

Angul District, by Regulation III of 1913, s. 3;

British Baluchistan, by Regulation II of 1913, s. 3;

Laccadive Islands and Minicoy

Talúqs of Nugur, Albaka and 1909, s. 2 (as one

of the enactments in force in

Pargana of Manpur, by the Ma (2 of 1926), s. 2

² For list of such territories, see A, paragraph the Statute has been applied to Tappa Chaurasi, in the Mirzapur District of the United Provinces of Agra and

Oudh, see Gazette of India, 1874, Pt. 1, p. 133, but it is not a Scheduled District.

³ Short title, the Government of India Act, 1870 (33 and 34 Vict., c. 3). Repealed by the Government of India Act (5 and 6 Geo 5, c. 61)

⁴ The words "with the previous sanction of the Governor General in Council" were repealed by s. 2 and Sch. I of the Devolution Act, 1920 (33 of 1920)

⁵ For notifications bringing the Act into force in Scheduled Districts, see Appendix A to this Act, *infra*

⁶ The words "in the Gazette of India and also" were repealed by s. 2 and Sch. I of the Devolution Act, 1920 (33 of 1920)

⁷ The words "(if any)" were repealed, *ibid*

Effect of
notification
under
section 3.

4. On the issue, under section 3, of a notification declaring what enactments are in force, or not in force, in any Scheduled District, the enactments so notified shall be deemed to be in force or not in force, according to the tenor of the notification, in such district, and every such notification shall be binding on all Courts of law.

Power to ex-
tend enact-
ments to
Scheduled
Districts.

5. The Local Government ^{1*} * * * * may, from time to time, by notification ^{2*} * * * * in the local Gazette ^{3*} * * * * extend to any of the Scheduled Districts, or to any part of any such district, any enactment which is in force in any part of British India at the date of such extension.

Modification
of enact-
ments in
their applica-
tion to
Scheduled
Districts.

⁴[5A. In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act, or in extending an enactment to a Scheduled District or part thereof under section 5 of this Act, the Local Government ^{1*} * * * * may declare the operation of the enactment to be subject to such restrictions and modifications as that Government thinks fit.]

Appointment
of officers
and regula-
tion of their
procedure.

6. The Local Government⁵ may from time to time—

- (a) appoint officers to administer civil and criminal justice and to superintend the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts,
- (b) regulate the procedure of the officers so appointed; but not so as to restrict the operation of any enactment for the time being in force in any of the said districts,
- (c) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed.

Continuance
of existing
rules and
officers.

7. All rules heretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section 6, and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs.

All existing officers so appointed previous to the date on which this Act comes into force in such district shall be deemed to have been appointed hereunder.

Settlement of
questions as
to boundary.

8. Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory, such officer as the

¹ The words "with the previous sanction of the Governor General in Council" were repealed by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² The words "in the Gazette of India and also" were repealed by s. 2 and Sch. I, *ibid.*

³ The words "(if any)" were repealed by s. 2 and Sch. I, *ibid.*

⁴ S. 5A was inserted by the Repealing and Amending Act, 1891 (12 of 1891).

⁵ For notifications issued under the powers conferred by this section, see different local rules and orders.

Local Government or (where the said district and the other territory are not subject to the same Local Government) as the Governor General in Council from time to time appoints, may consider and determine such line of boundary,

and the order made thereon by such officer, if confirmed by the Government which appointed him, shall be conclusive in all Courts of Justice

9 Any person liable to be imprisoned or to be transported beyond sea under any order or sentence passed by any officer appointed under section 6 may (subject to such rules as the [Local Government] may from time to time prescribe in this behalf) be imprisoned in such jail or transported to such place as the Local Government directs

Place of imprisonment or transportation

10 Acts No III¹ of 1867, * * * and No XXV of 1869² are hereby declared to be in force in the tract of land ceded to the British Government in the year 1863 and lying between the Railway Station at Satna and the eastern boundary of the Jabalpur District

Extension to Satna strip of Acts relating to public gambling and salt

11 Nothing contained in this Act or in any notification issued under the powers hereby conferred shall be deemed—

Saving of criminal jurisdiction over European British subjects, and saving of other laws

(a) to affect the criminal jurisdiction of any Court over European British subjects, or

(b) to affect any law other than laws contained in Acts or Regulations or in rules made in exercise of powers conferred by such Acts or Regulations

THE FIRST SCHEDULE

(See section 1)

PART I

SCHEDULED DISTRICTS,⁵ MADRAS

1—In Ganjam

- (1) The Gumsur Maliahs, including Chokrapad
- (2) The Surada Maliahs
- (3) The Chinnu Kimeri Maliahs
- (4) The Pedda Kimeri Maliahs

¹ These words were substituted for the words "Governor General in Council" by 2 and Sch I of the Devolution Act, 1920 (33 of 1920)

² C. Procs. Code

³ So much of this section as related to Act 14 of 1867 was repealed by Act 6 of 1902, the words and figures "No 14 of 1867" have accordingly been omitted

⁴ Act 20 of 1869 was repealed by the Repealing and Amending Act, 1891 (12 of 1891). See now the Indian Salt Act 1882 (12 of 1882)

⁵ For a list of districts which since the passing of the Act have become "Scheduled Districts" see Appendix B, *infra*

- (5) The Bodaguda Maliahs.
- (6) The Surangi Maliahs.
- (7) The Parla Kimedi Maliahs.
- (8) The Muttās of Koradā and Ronaba (otherwise called Srīkarma).
- [(9) *The Chighatti Maliah.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*
- (10) The Juradā Maliah.
- (11) The Jalantra Maliah.
- (12) The Mandasa Maliah.
- (13) The Budarasinghi Maliah.
- (14) The Kuttingia Maliah.

II.—In Vizagapatam.

- (1) The Jeypur Zamíndarí.
- (2) Golconda Hills west of the River Boderu.¹
- (3) The Madugol Maliahs.
- (4) The Kasipur Zamíndarí.
- (5) The Panchipenta Maliahs.
- (6) Mondemkolla, in the Merangi Zamíndarí.
- ²[(7) The Konda Muttá of Merangi.]
- (8) The Gumma and Konda Muttās of Kūrpam.
- (9) The Kottam, Rám and Konda Muttās of Pálkonda.

III.—In the Godávāri District.³

- (1) The Bhadráchalām Tálug.⁴
- (2) The Rákapilli Tálug.⁴
- (3) The Rampá Country.

IV.—In the Indian Ocean.

⁵The Laccadive Islands. including Minicoy.

¹ The Duchatri and Guditeru Muttās in the Golconda Hills have been transferred from the VIZAGAPATAM to the GODAVARI District, see Fort St. George Gazette, 1881, Pt. I, p. 336.

² This entry was substituted for the original entry "(7) The Konda Muttá of Belgám" by the Repealing and Amending Act, 1891 (12 of 1891).

³ For additional Scheduled Districts in the GODAVARI District, see Appendix B.

⁴ The Bhadráchalām and Rákapilli Tálugs now form one Tálug styled the Bhadráchalām Talug to which the Government of India Act, 1870 (33 Vic., c. 3) has been applied: See notification No. 546, dated 15th April, 1909, Gazette of India, 1909, Part I, p. 278.

⁵ These islands, which at the date of the passing of this Act were not British territory, were, by virtue of cession by the Raja of Cannanore, declared to be subject to the Presidency of Fort St. George, see Gazette of India, 1909, Pt. I, p. 111. This Act was declared to be in force in these islands by Regulation I of 1912, s. 3.

PART II

SCHEDULED DISTRICTS, BOMBAY

- I—The Province of Sindh ¹
- II—[The Panch Mahals] *Rep by the Panch Mahals Laws Act, 1880*
(VII of 1885), with effect from the 1st May 1885
- III—Aden ²
- IV—The villages belonging to the following Mewar Chiefs—
- (1) The Parvi of Kathi
 - (2) The Parvi of Nal
 - (3) The Parvi of Singpur
 - (4) Walvi of Gakhli
 - (5) The Wasswar of Chulhli
 - (6) The Parvi of Nawalpur

PART III

SCHEDULED DISTRICTS, BENGAL

- I—The Jalpaiguri and Darjeeling Districts ³
- II—The Hill Tracts of Chittagong ⁴
- III—The Sonchal Parganas ⁵

¹ The Government of India Act 1870 (33 Vict, c 3), which has been re-enacted by the Government of India Act 1915, was applied to the Province of Sindh namely—the Districts of Baluchistan, Kalat, Kutch, and the Districts of Sehwan, Karkhar, Kambar, and the Indus to the sea west of

² Aden:

³ The Government of India Act 1870 (33 Vict, c 3) which has been re-enacted with modifications in the Government of India Act 1915 was applied at different times to Aden the Island of Perim and the Settlement of Aden and its Dependencies (for the time being) inclusive of the villages of Shaikh Othman Imad and Hiswa the Island of Perim and Little Aden. As to what Aden includes for the purposes of all enactments heretofore or hereafter passed or made see s 2 of the Aden Laws Regulation 1891 (2 of 1891), Bom Code

⁴ Districts was substituted for "Divisions" by the Repealing and Amending Act 1891 (12 of 1891)

⁵ The Act has not been brought into force in the Hill tracts of Chittagong (excluding that portion known as Rutton Pura's villages including Demaguri, now forming part of the Lushai Hills District under the Chief Commissioner of Assam), the Sonchal Parganas and such portions of the Chutia Nagpur Division as are not comprised within the Districts of Hazaribagh, Lohardaga (now called the Ranchi District, see Calcutta Gazette 1899 Pt I, p 44), Palamau or Manbhum, or within the Lalgunga, Dhalbhum, the Kolhan or the Porahat Estate in the District of Singhbhum

³ (33 Vict, c 3), which has been re-enacted by the Government of India Act, was applied to these territories in the Nagpur Division and the Mahal of Angul

² Schedule B used in the Province of Bihar and Orissa see Act VII of 1912,

IV.—The Chutiá Nágpur Division.^{1 2}

V.—The ³[Mahál of Angul]⁴.

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

I.—[*The Jhānsi Division, comprising the Districts of Jhānsi, Jalaun and Lalatpur.*] Rep. by the North-Western Provinces and Oudh Act, 1890 (XX of 1890), s. 8 (1), with effect from the 1st April, 1891.

II.—The Province of Kumáon and Garhwál.

III.—The Taráí Parganas, comprising—Bázipúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Matthá and Bilheri.¹

IV.—In the Mirzápur District—

- (1) The tappás of Agori Khás and South Kon in the Pargana of Agori.
- (2) The tappá of British Singrauli in the Pargana of Singrauli.
- (3) The tappás of Phulwá, Dudhi and Barhá in the Pargana of Bichipár.
- (4) The portion lying to the South of the Kaimor Range.

¹ The Act has not been brought into force in the Hill-tracts of Chittagong (excluding that portion known as Rutton Puiya's villages including Demagiri, now forming part of the Lusháí Hills District under the Chief Commissioner of Assam), the Sonthál Parganas and such portions of the Chutiá Nágpur Division as are not comprised within the Districts of Hazáribagh, Lohárdaga (now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), Palamau or Mánbhum, or within the Pargana Dhálbhum, the Kolhán or the Porahát Estate in the District of Singbhum.

² The *Thanas of Raipur and Khattra*, which formerly formed portion of the Chutiá Nágpur Division, have been transferred to the District of Bankura, and ceased to be a Scheduled District on the 1st October, 1879, see the Raipur and Khattra Laws Act, 1879 (19 of 1879), Ben. Code.

The ESTATE OF PORAHÁT now form part of the Chutiá Nágpur Division Scheduled District, see the Porahát Estate Act, 1893 (2 of 1893), s. 3, Ben. Code.

³ These words were substituted for the words "Maháls of Angul and Banki" with effect from the 1st April, 1882, by the Banki Laws Act, 1881 (25 of 1881), s. 4, Ben. Code.

The KHONDMAHS, in Orissa (which now form part of the Angul District, see the Angul Laws Regulation, 1913 (3 of 1913), s. 2 (d), B. and O. Code, Vol. I), are a Scheduled District, see Appendix B.

⁴ The Government of India Act, 1870 (33 Vict., c. 3), which has been re-enacted with modifications in the Government of India Act, was applied to these territories.

The Sonthál Parganas, the Chotiá Nágpur Division and the Mahál of Angul are now included in the Province of Bihar and Orissa, see Act VII of 1912, Schedule B.

V—[*The Family Domains of the Maharaja of Benares, comprising the following parganas Bhadohi and Kheyra Mangror in the Mirzapur District, Kasua Raja in the Benares District*]
Rep by the Benares Family Domains Act, 1881 (XIV of 1881), s 14, with effect from the 24th September 1881

VI—The tract of country known as Jannsar Bawar in the Dehrá Dun District

PART V

SCHEDULED DISTRICTS, PUNJAB

The Districts of Hazara,¹ Peshawar,¹ Kohat,¹ Bannu,¹ Dera Ismail Khan,¹ Dera Ghazi Khan,¹ Lahaul, and Spiti¹

PART VI

SCHEDULED DISTRICTS, CENTRAL PROVINCES

Chhattisgarh Zamindaris, viz —

1 Khariar	13 Matin
2 Bindra Nawagarh	14 Uprora
3 Sahezipur	15 Kenda
4 Gándai	16 Lapha
5 Silheti	17 Chhuri
6 Barbaspur	18 Korba
7 Thakurtola	19 Chupa
8 Lohara	20 Bora Sambhar
9 Gondardehi	21 Phuljhar
10 Fingeswar	22 Kolabira
11 Pandaria	23 Rampur
12 Pendiā	

Chanda Zamindaris

1 Ahiri	3 Aundhi
2 Amhagarh Chauli	4 Dhanora

¹ The Government of India Act, 1870 (33 Vict., c 3), which has been re enacted with modifications in the Government of India Act 1915, was applied to these territories

Portions of the Districts of Hazara Bannu and Dera Ismail Khan and the Districts of Peshawar and Kohat now form the N W Frontier Province see Notification No 580 dated the 20th October, 1901 Gazette of India 1901, Pt I, p 857

- | | |
|----------------|-------------------|
| 5. Dúdhmalú. | 13. Palasgarh. |
| 6. Gewardá. | 14. Rángí. |
| 7. Jhárápáprá. | 15. Sirsundí. |
| 8. Khutgáon. | 16. Sonsari. |
| 9. Koráchá. | 17. Chándálá. |
| 10. Kotgal. | 18. Gilgáon. |
| 11. Munamgáon. | 19. Páwi Mutóndá. |
| 12. Pánábáras. | 20. Pategáon. |

Chhindwára Jágirdáris.

- | | |
|---------------|--------------------|
| 1. Haráí. | 7. Pachmarhí. |
| 2. Chháter. | 8. Partábgarh. |
| 3. Gorakghát. | 9. Ahmed. |
| 4. Gorpání. | 10. Sonpúr. |
| 5. Baktágárh. | 11. Bariám Pagará. |
| 6. Bardágárh. | |

PART VII.

The Chief Commissionership of Coorg.¹

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.^{1 2}

PART IX.

The Chief Commissionership of Ajmer and Merwára.¹

PART X.

The Chief Commissionership of Assam.¹

¹ The Government of India Act, 1870 (33 Vict., c. 3), which has been re-enacted with modifications in the Government of India Act, 1915, was applied to these territories.

² The *Little Cocos Island* was transferred to the administration of the Chief Commissioner (now Governor) of Burma, and ceased to be a Scheduled District on the 29th November 1882, see the *Little Cocos and Preparis Islands Laws Act*, 1883 (8 of 1883), Bur. Code, Vol. I.

PART XI

The Hill Tracts of Arakan¹

PART XII

The Pargana of Manipur

[PART XIII—*The Cantonment of Morar*] *Rep by the Repealing and Amending Act, 1891 (XII of 1891)*

THE SECOND SCHEDULE

(See section 2)

Number and year	Title
XXXXVII of 1855	An Act to remove from the operation of the general Laws and Regulations certain Districts inhabited by Santhals and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose
X of 1857	An Act to amend Act XXXVII of 1855
* * * * *	* * * * *
* * * * *	* * * * *
* * * * *	* * * * *

¹ The Government of India Act, 1870 (33 Vict, c 3), which has been re-enacted with modifications in the Government of India Act, was applied to these territories² The Pargana of Manipur has now been made a Chief Commissionership, see Proclamation published with Notification No 3101, dated 11th June, 1924, Gazette of India, 1924, Pt I, p 483³ The entries relating to Acts 9 of 1846, 14 of 1861, 19 of 1864, 4 of 1868 and 22 of 1869, were repealed by the Repealing Act, 1927 (12 of 1927), s 2 and Sch⁴ Ben Code Acts 37 of 1855 and 10 of 1857 are still in force in the Santhal Parganas as Act 14 of 1874 has not yet been declared in force there⁵ The entries relating to Act 22 of 1860 and to Bengal Act 4 of 1863 were repealed by the Chittagong Hill tracts Regulation, 1900 (1 of 1900), s 20, Ben Code

APPENDIX A.

Scheduled Districts in which the Scheduled Districts Act, 1874, has been brought into force by notification under section 3 of the Act.

1	2	3	4
Presidency or Province.	Scheduled Districts.	No. and date of Notification.	Gazette in which the Notification is published.
*Madras	The Taluqs of Bhadrachalam and Rakapilli and the Rampā Country.	728, dated 26th June, 1879. Dated 20th June, 1879.	India, 1879, Pt. I, p. 437. Fort St. George, 1879, Pt. I, p. 462.
	The remaining Scheduled Districts of Madras, as existing on the 19th February, 1889.	82. dated 19th February, 1889.	India, 1889, Pt. I, p. 151.

1	2	3	4
Presidency or Province	Scheduled Districts	No and date of Notification	Gazette in which the Notification is published
Bihar and Orissa	The following portions of the Chutia Nagpur Division, namely — the Districts of Hazaribagh, Lohardaga ¹ and Manbhum, and Pargana Dhalbhum in the District of Singhbhum	1664 A, dated 5th November, 1877 Dated 5th November, 1877	India, Extraordinary, 14th November, 1877 Calcutta, 1877, Pt I, p 1623
	the Kolhan, in the District of Singhbhum	1393, dated 21st October, 1881	India, 1881, Pt I, p 504 Calcutta, 1881, Pt IA, p 189
	the Estate of Porahat, in the District of Singhbhum	2296 P, dated 2nd August, 1895	India, 1895, Pt I, p 685 Calcutta, 1895 Pt I, p 765
	² The Mahal of Angul	1664 A, dated 5th November, 1877 Dated 5th November, 1877	India Extraordinary, 14th November, 1877 Calcutta, 1877, Pt J, p 1623
United Provinces	³ Kumaon and Garhwal	1746, dated 2nd November, 1876 566 A, dated 5th December, 1876	India, 1876, Pt I, p 605 N W P, 1876, p 1548
	⁴ Tarai District	1553 dated 22nd September, 1876	India, 1876, Pt I, p 505 N W P, 1876, p 1278
	The Scheduled portion of the Mirzapur District	636, dated 30th May, 1879	India, 1879, Pt I, p 383 N W P, 1879, p 775
	Pargana Jaunsar Bawar, in the Dehra Dun District	632, dated 30th May, 1879	India, 1879, Pt I, p 381 N W P, 1879, p 774
Punjab and N W F P	The Scheduled Districts of the Punjab ⁵	144 J, dated 18th September, 1877	India, 1877, Pt I, p 562 Punjab, 1877, Pt II, p 1107

¹ The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894. Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44.

² The Scheduled Districts Act has been declared in force in the whole District of Angul which now includes the Khondmals, by the Angul Laws Regulation, 1913 (3 of 1913), s 3, B and O Code, Vol I.

³ The Scheduled Districts Act itself has not been expressly declared in force in Kumaon, Garhwal or the Tarai District, but the Act has been brought into force in those places by the issue of notifications under section 3, declaring other enactments in force.

⁴ Of these, the districts of Peshawar and Kohat and portions of the districts of Hazara, Bannu and Dera Ismail Khan now form the N. W. F. Province.

1	2	3	4
Presidency or Province.]	Scheduled Districts.	No. and date of Notification.	Gazette in which the Notification is published.
Central Provinces.	The Scheduled Districts of the Central Provinces.	449, dated 10th April, 1878.	India, 1878, Pt. I, p. 266. Central Provinces, 1878, Pt. I, p. 83
Coorg . . .	The Chief Commissioner-ship of Coorg.	305, dated 22nd February, 1875.	India, 1875, Pt. I, p. 95.
Andaman and Nicobar Islands.	The Chief Commissioner-ship of the Andaman and Nicobar Islands.	75, dated 15th March 1878.	India, 1878, Pt. I, p. 132.
Ajmere and Merwara.	Ajmere and Merwara . . .	169 J, dated 19th October, 1877.	India, 1877, Pt. I, p. 605.
Assam . . .	The Chief Commissioner-ship of Assam.	1651, dated 3rd November, 1877. Dated 7th November, 1877.	India, 1877, Pt. I, p. 662. Assam, 1877, Pt. I, p. 383.
	The Lu-hai Hills (formerly known as the North and South Lushai Hills) and Rutton Puiya's villages, including Demagiri, in the Chittagong Hill tracts	921 P., dated 1st April, 1898.	India, 1898, Pt. II, p. 345. Assam, 1898, Pt. I, p. 379
Burma . . .	The Hill tracts of Arakan in Lower Burma.	346, dated 14th August, 1889.	India, 1889, Pt. I, p. 450. ¹ Burma, 1889, Pt. I, p. 369.
	Upper Burma (except the Shan States).	Dated 26th October, 1886.	India, 1886, Pt. I, p. 664. ² Burma, 1886, Pt. I, p. 335.
³ Mánpur . . .	The Pargana of Mánpur . . .	1397 I., dated 18th March, 1887.	India, 1887, Pt. I, p. 157.
British Baluchistan.	The Chief Commissionership of British Baluchistan.	63 F. C., dated 8th December, 1887.	India, 1887, Pt. I, p. 612. ⁴

¹ The Scheduled Districts Act has been declared in force in the Arakan Hills by the Arakan Hill District Laws Regulation, 1916 (1 of 1916), Bur. Code, Vol. I.

² The Scheduled Districts Act has also been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code. As to the operation of the Scheduled Districts Act, 1874, on the transfer of territory from Upper to Lower Burma or *vice versa*, see s. 14, *ibid*.

³ The Pargana of Mánpur has now been made a Chief Commissionership; see Proclamation published with Notification No. 310—1, dated 11th June, 1924; Gazette of India, 1924, Pt. I, p. 483.

⁴ The Scheduled Districts Act was again declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code.

APPENDIX B.

Territories which have become Scheduled Districts by virtue of the concluding portion of the third paragraph of section 1 of the Scheduled Districts Act, 1874, namely, those to which the Secretary of State for India has, by Resolution in Council, declared the provisions of the Government of India Act,¹ 1870 (33 Vict, c. 3), section 1, to be applicable

1	2	3	4
Presidency or Province	Territories	Date from which the Resolution took effect.	Gazette of India in which the Resolution is published.
Madras .	In the Godavari District— (1) the unsettled Government villages in the Yernagudem Taluk	8th May 1883.	1883. Pt I, p 265.
	anagudem, Billamilli, Jan gamreddigudem, Gutala, Gangolu, Patteshum, Polavaram, Petta, Dangengi, Viravaram and Davipatram In the Godavari District— (1) the following villages of the Ernagudem Taluk — (a) the settled Government villages of Ganapavaram, Taduvaya and Parimpendi, (b) the Agraharams of Ragolopalli, Saggonada, Dondapudi, Palacherla Rajavaram, Ayyanani Polavaram, Seemirasapuram, Pallipudi, Ramani Japuram and Kristnapuram ; (2) the following villages of the Rajahmundry Taluk — (c) the Lakkonda Sime of Gangaram, Lakkonda, Pidatamamudi, Vanayapadu, Vojubanda, Potam dorapallem, Jaggampalam, Jiyvampallam, Rajaram, Neladonalapadu, Kondalipallam, Kumarapadu, Rajupeta Loddi, Yamnapalli, Vunmetta, Chodaram, Loddipallem, Rajampallem, Botireddi, Sivan Patnam, Gadichinnampallem, Matlapadu, Kundumullapallem, Vemmlana, Auttagondi Bandam, Vuvyalamadugu, Agraharapadu, Peda	4th April, 1891	1891, Pt. I, p. 248.

¹ Now repealed by the Government of India Act.

1	2	3	4
Presidency or Province.	Territories.	Date from which the Resolution took effect.	Gazette of India in which the Resolution is published.
Madras—contd.	<p>gachipadu, Goragumovi, Pandapattipallem, Kuramaram, Annadabandu, Doramanidi, Verrampallem, Kottala, Donlapalli, Saravapalem, Chinagalpudu;</p> <p>(d) the unsettled independent villages of Bzyyanapalli, Kotta Ramararam, Pataramavaram, Uppalipadu, Narakapuram, K. Vidank, Pella Bhimpali, Nellaudi, Lingavaram, Moller, Kattumih, Ramadevipuram and Dokulamanda Kistnavaram.</p> <p>In the Indian Ocean— The Laccadive and Minicoy Islands.</p> <p>The taluquas of Nagur, Albaka and Cherla which ceased to be subject to the Chief Commissionership of the Central Provinces and became subject to the Government of Madras in pursuance of Proclamation No. 545, dated 15th April, 1909, issued by the Governor General in Council under s. 4 of the Government of India Act, 1865, with effect from 1st July, 1909.</p>	<p>30th November, 1909.</p> <p>17th January, 1909.</p>	<p>1910, Pt. I, p. 286.</p> <p>1909, Pt. I, p. 272.</p>
Assam . . .	¹ The North Lushai Hills . . .	6th September, 1895.	1895, Pt. I, p. 935.
	The South Lushai Hills . . .	1st October, 1895.	
Bihar & Orissa	The Khondmahs in Orissa . . .	28th July, 1891.	1891, Pt. I, p. 537.
Burma . . .	Upper Burma (except the Shan States).	1st March, 1886.	1886, Pt. I, p. 311.
	The Chin Hills	6th September, 1895.	1895, Pt. I, p. 936.
British Baluchistan.	The territories for the time being under the administration of the Chief Commissioner of British Baluchistan. (These territories include the tracts known as Peshin, Shararud, Kach, Kawas, Harnai, Sibi and Thal Chotiali.)	1st November, 1887.	1887, Pt. I, p. 591.

¹ These Hills, together with Rutton Puiya's villages, including Demagiri in the Chittagong Hill-tracts, are now known as the Lushai Hills, see Notification No. 592 E. B., dated 1st April, 1898, Assam Gazette, 1898, Pt. I, p. 378. The combined territory has been placed under the administration of the Chief Commissioner of Assam (now Governor of Assam) and included within that Province—see Proclamation No. 501-S. B., dated 1st April, 1898, Gazette of India, 1898, Pt. I, p. 369.

THE LAWS LOCAL EXTENT ACT, 1874.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
2. Interpretation-clause.
3. Local extent of Acts in first schedule.
4. Local extent of enactments in second schedule.
5. Local extent of enactments in third schedule.
6. Local extent of enactments in fourth schedule.
7. Local extent of enactments in fifth schedule.
8. Savings.
9. [*Repealed.*]

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF BRITISH INDIA, EXCEPT THE SCHEDULED DISTRICTS.

SECOND SCHEDULE.

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF THE TERRITORIES SUBJECT TO THE GOVERNMENT OF THE GOVERNOR OF PORT ST. GEORGE IN COUNCIL, EXCEPT THE SCHEDULED DISTRICTS

THIRD SCHEDULE.

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF THE TERRITORIES SUBJECT TO THE GOVERNMENT OF THE GOVERNOR OF BOMBAY IN COUNCIL, EXCEPT THE SCHEDULED DISTRICTS.

FOURTH SCHEDULE.

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF THE TERRITORIES SUBJECT TO THE GOVERNMENT OF THE LIEUTENANT-GOVERNOR OF BENGAL, EXCEPT THE SCHEDULED DISTRICTS.

FIFTH SCHEDULE.

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF THE TERRITORIES SUBJECT TO THE GOVERNMENT OF THE LIEUTENANT-GOVERNOR OF THE NORTH-WESTERN PROVINCES, EXCEPT THE SCHEDULED DISTRICTS.

SIXTH SCHEDULE.

- PART I.—SCHEDULED DISTRICTS, MADRAS.
 „ II.—SCHEDULED DISTRICTS, BOMBAY.
 „ III.—SCHEDULED DISTRICTS, BENGAL.
 „ IV.—SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.
 „ V.—SCHEDULED DISTRICTS, PUNJAB.
 „ VI.—SCHEDULED DISTRICTS, CENTRAL PROVINCES.
 „ VII.—THE CHIEF COMMISSIONERSHIP OF COORG.
 „ VIII.—THE CHIEF COMMISSIONERSHIP OF THE ANDAMAN AND
 NICOBAR ISLANDS.
 „ IX.—THE CHIEF COMMISSIONERSHIP OF AJMER AND MERWARA.
 „ X.—THE CHIEF COMMISSIONERSHIP OF ASSAM.
 „ XI.—THE HILL TRACTS OF ARAKAN.
 „ XII.—THE PARGANA OF MANPUR.
 „ XIII.—[*Repealed.*]

SEVENTH SCHEDULE.

[*Enactments Repealed*].—*Repealed.*

ACT No. XV of 1874.¹

[8th December, 1874.]

An Act for declaring the local extent of certain Enactments,
 and for other purposes.

WHEREAS it is expedient to declare the local extent of certain Acts passed by the Governor General of India in Council, the Legislative Council of India, and the Council of the Governor General of India assembled for the purpose of making Laws and Regulations;

And whereas it is also expedient to consolidate the laws relating to the local extent of certain Acts and Regulations in the Presidencies of Fort St. George and Bombay, and in the Lower and the North-Western Provinces of the Presidency of Fort William in Bengal;

It is hereby declared and enacted as follows:—

1. This Act may be called the Laws Local Extent Act, 1874.

2. In this Act the expression “Scheduled Districts” means the territories mentioned in the sixth schedule hereto annexed.

3. The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India, except the Scheduled Districts.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V, p. 153; and for Proceedings in Council, see *ibid.*, 1871, Supplement, pp. 1074 and 1218; and *ibid.*, 1874, Supplement, pp. 1885 and 1976.

4. The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Fort St George in Council, except the Scheduled Districts subject to such government

Local extent
of enactments
in second
schedule.

5 The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Bombay in Council, except the Scheduled Districts subject to such government

Local extent
of enact-
ments in
third
schedule

6. The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts subject to such government

Local extent
of enact-
ments in
fourth
schedule.

7. The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, except the Scheduled Districts subject to such government

Local ex-
tent of enact-
ments in fifth
schedule

8. Nothing herein contained shall—

Savings.

- (a) have the power of the Governor General in Council or the Local Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule,
- (b) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of such power,
- (c) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts,
- (d) revive any enactment which has been repealed either generally or with reference to some special subject,
- (e) [Rep by Act VIII of 1887],
- (f) [Rep by the Repealing and Amending Act, 1891 (XII of 1891)],
- (g) [Rep by the Guardians and Wards Act, 1890 (VIII of 1890)],
- (h) [Rep by Act VIII of 1887],
- (i) [Rep by the Repealing and Amending Act, 1894 (IV of 1894)],
- (j) extend to any of the Towns of Calcutta Madras and Bombay any law not now in force therein,
- ¹[(j)] extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kiswa Raja in the Benares District, any law not now in force therein],

¹ Cl (j) was inserted by s 15 of the Benares Family Domains Act, 1881 (14 of 1881), U P Code

(k) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.

9. [Enactments repealed.] Rep. by the Repealing Act, 1876 (XII of 1876).

FIRST SCHEDULE.¹

(See section 3.)

ACTS OF THE SUPREME COUNCIL.

Year and Number.					Subject.
1837,	IV	.	.	.	Power to acquire land.
1838,	XXV	.	.	.	Wills executed before the 1st January 1866.
1839,	XXIX	.	.	.	Dower, when marriage was contracted before 1st January 1866.
"	XXX	.	.	.	Inheritance, where descent took place before 1st January 1866.
"	XXXII	.	.	.	Interest.
1841,	X	.	.	.	Registration of ships.
1843,	V	.	.	.	Slavery.
1850,	V	.	.	.	Coasting Trade.
"	XI	.	.	.	Navigation Laws.

¹ Act 15 of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted.					Repealing Acts.
Act	XXVI of 1836	.	.	.	Act XII of 1927.
"	VI of 1840	.	.	.	XXVI of 1881.
"	XI of 1841	.	.	.	VIII of 1887.
"	XVIII of 1841	.	.	.	XI of 1878.
"	XIX of 1841	.	.	.	XII of 1927.
"	IX of 1842	.	.	.	XII of 1891.
"	XII of 1842	.	.	.	VIII of 1887.
"	XX of 1847	.	.	.	XII of 1927.
"	XXX of 1852	.	.	.	XII of 1927.
"	XXXIII of 1852	.	.	.	VIII of 1887.
"	XVIII of 1854	.	.	.	XII of 1891.
"	I of 1859	.	.	.	XXI of 1923.
"	III of 1859	.	.	.	VIII of 1887.
"	VIII of 1859	.	.	.	
"	XIV of 1859, s. 15	.	.	.	XII of 1891.
"	XV of 1859	.	.	.	
"	XXVII of 1860	.	.	.	VII of 1889.
"	IX of 1861	.	.	.	VIII of 1890.
"	XXIII of 1861	.	.	.	XII of 1891.
"	VI of 1863	.	.	.	
"	VI of 1864	.	.	.	XII of 1927.
"	XI of 1865	.	.	.	IX of 1887.
"	XXI of 1865	.	.	.	
"	V of 1866	.	.	.	XII of 1927.
"	X of 1866	.	.	.	XII of 1891.
"	X of 1867	.	.	.	IX of 1887.
"	X of 1868	.	.	.	XII of 1891.
"	XV of 1869	.	.	.	
"	I of 1870	.	.	.	XII of 1927.

Year and Number	Subject
1850, XII	Default of Public Accountants
" XVIII	Protection of Judicial Officers
" XIX	Binding of Apprentices
" XXI	Non forfeiture of rights by loss of Caste
" XXXIV	State Prisoners
" XXXVII	Inquiries into the behaviour of Public Servants
1853, II	Burdens on land
1854, XXXI	Barring entails Conveyances by married women
1855, XI	Mesne profits and improvements
" XII	Executors and Administrators
" XIII	Compensation for loss occasioned by death caused by actionable wrong
" XXIII	Administration of mortgaged estates in cases of descents occurring or devises made before the 1st January 1863
" XXIV	Penal servitude
" XXVIII	Interest
1856, IX	Bills of Lading
" XI	Desertion by European Soldiers
" XV	Marriage of Hindu Widows
1857, XI	Offences against the State.
" XXV	Forfeiture by Muhneers
1858, III	State Prisoners
" XXXV	Estates of Lunatics not subject to jurisdiction of Supreme Courts
" XXXVI	Lunatic Asylums
1859, IX	Sections 16, 17, 18 and 20—Forfeitures.
1860, XXI	Registration of Societies
1862, III	Government Seal
1863, XVI	Excise Duty payable on Spirits used in Arts and Manufactures
" XXIII	Claims to waste lands
" XXXI	Gazette of India
1864, III	Foreigners.
1865, III	Common Carriers.
" XV	Marriage and Divorce among Parsees

¹ Act 12 of 1850 is repealed locally in Assam by the Assam Land Revenue Regulation, 1886 (I of 1886), Assam Code

² These Acts were repealed by s 3 and Sch of Act 4 of 1922.

³ These Acts were repealed by the Indian Lunacy Act, 1912 (4 of 1912).

Year and Number.		Subject.
1866,	XXI	Dissolution of Marriages of Native Converts.
"	XXVIII	Trustees and Mortgagees' Powers.
1867,	XXV	Printing Presses, etc.

SECOND SCHEDULE.¹

(See section 4.)

(a).—MADRAS REGULATIONS.

Year and Number.		Subject.
1802,	III (s. 1, part of s. 16 only)	Procedure of Civil Courts.
	" XIX (s. 2)	Covenanted Civil Servants forbidden to lend.
	" XXV	Settlement of Land-revenue.
	" XXVI (ss. 1, 2 and 3 only)	Registration of malguzari land.
"	XXIX	Karnams.
1803,	I	Board of Revenue.
	" II	Conduct of Collectors, etc.

¹ Act 15 of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from the schedule:—

Enactments omitted.		Repealing Acts.
Mad. Reg.	III of 1802, s. 11	Act XII of 1891.
"	" V of 1802, s. 30	" XI of 1901.
"	" XIII of 1802	Do.
"	" I of 1807	" XII of 1891.
"	" II of 1807	
"	" IV of 1807	
"	" IX of 1816, s. 43	
"	" XIV of 1816	Act XII of 1927.
"	" V of 1816	
"	" I of 1819	" XII of 1876.
"	" IV of 1821, s. 4	
"	" III of 1831	
"	" VII of 1832	
"	" XI of 1832	" VI of 1878.
"	" XIV of 1832	" XIII of 1889.

² Mad. Code.³ Madras Regulation 29 of 1802 is repealed locally by Madras Act 2 of 1894. The Regulation is printed in the Madras Code, Ed. 1898, p. 12.

Year and Number.		Subject.
1804,	V	Court of Wards.
1806,	II § (s. 7, cl. second)) . . .	Collectors and Karnams.
1808,	VII	Marthal Law
1816,	XI	Sections 8, 9, 10—Heads of villages: Section 11, cl. 1—Stolen property: Section 13—Discovery of corpses: Section 14—Register of persons confined by heads of villages; and Section 47—Magistrates charged with maintenance of peace.
„	XII ⁴	Reference of claims regarding land and produce to Village and District Pancháyats.
1817,	VII	Maintenance of Bridges, etc; Escheats.
„	VIII (s 9 only)	Sale for arrears of revenue of estate belonging to Native Officer or Soldier.
1810,	II	State Prisoners.
1822,	IV	Explanation of Madras Regulation XXV, 1802.
„	VII (cl. 1 of a. 3 only)	Native Officers in Revenue and other Public Departments.
„	IX	Embezzlement by public servants and malversation in revenue matters.
1823,	III	
1828,	VII	Powers of Subordinate and Assistant Collectors
1829,	V	Hindu Wills and Estates.
1830,	I	Prohibition of Widow burning
1831,	V (s. 7, cl. 2 only)	Liability of Ministerial Officers for reception of improperly stamped document.
„	VI ⁵	Hereditary Village Offices
„	X ⁶	Prohibition of Sale of Estates of Minors for Arrears of Revenue
1832,	III	Limitation for Suits against orders of Revenue Authorities under Madras Regulation VII of 1829

⁴ Act 15 of 1874, so far as it relates to the portions of Madras Regulation 5 of 1804 which were repealed by the Guardians and Wards Act, 1890 (8 of 1890), is repealed by the latter Act. The Regulation was repealed by Madras Act 1 of 1902 (Madras Court of Wards Act).

.. ⁵ Parts of ss. 1, and 7 were originally referred to in this schedule. Of the entire 7 is now in force, see Pt. III of the Schedule

4 of 1922

been repealed by Madras Act 4 of 1897 (the far as it applies to cases of claims to lands may depend upon the determination of an id-inark.

⁶ Repealed by Madras Act 3 of 1895 (Madras Hereditary Village Offices Act), Mad. Code.

⁷ Act 15 of 1874, so far as it relates to Madras Regulation 10 of 1831, a. 3, is repealed by the Guardians and Wards Act, 1890 (8 of 1890). So much of the Regulation as is now in force is printed in the Madras Code.

(b).—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY.¹

Year and Number.	Subject.
1837, XXXVI	Criminal Jurisdiction of Collectors.
1839, VII	Tahsildárs.
1840, VIII	Awards of Pancháyats.
1844, VI	Duties.
1846, I	Pleaders.
1849, X	Commissioners of Revenue.
1853, XX	Pleaders.
1857, VII	Uncovenanted Agency.
1858, I	Compulsory Labour.
1859, XXIV	Police.

¹ Act 15 of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the reference to those enactments have been omitted from this schedule:—

Enactments omitted.	Repealing Acts.
Act XII of 1838	Act VI of 1878.
„ XVII of 1840 }	„ XII of 1891.
„ VII of 1852 }	„ XII of 1927.
„ IX of 1846	„ XI of 1901.
„ X of 1855, s. 10	„ VIII of 1887.
„ XIV of 1855	„ XII of 1927.
„ XXI of 1855	„ VIII of 1890.
„ VIII of 1856	„ XII of 1927.
„ XIV of 1858	„ XII of 1891.
„ XXVIII of 1860	„ XVIII of 1877.
„ XI of 1869	
„ XXIV of 1869	

² Repealed by Mad. Act 1 of 1902 (Madras Court of Wards Act).

³ As to the repeal of Acts 1 of 1846 and 20 of 1853 in the Madras Presidency, *see* ss. 1 and 42 of the Legal Practitioners Act, 1879 (18 of 1879). The Acts of 1846 and 1853 are printed in Vol. I of General Acts.

THIRD SCHEDULE ¹

(See section 5.)

(a).—BOMBAY REGULATIONS

Year and Number		Subject
1827,	II	Section 21 (caste questions), * * * *
"	IV	Section 26 ² (law applicable to suits), section 69, ³ clauses <i>second</i> and <i>third</i> ³ (attachment and distraint of crops).
"	V	Preamble section 9 (acknowledgments of debt) section 14 (interest) section 15 (mortgages and pledges)
"	VIII	Administration of Estates
"	XII	Section 19 (Magistrate's power to make rules); section 20 (standards of weights and measures) section 27, clause 2 (supervision of suspected persons) section 37, clauses <i>first</i> and <i>second</i> (responsibility of villages for robberies)
"	XIII	Section 34, ⁴ clause <i>third</i> (letter substituted for summons)
"	XXII	Sections 40, 41, 42, 43 (passage of troops)
"	XXV	State Prisoners.
"	V	Section 1 (Revenue Commissioners): section 2, clauses 1, 2, 3 (Collectors and Sub Collectors)
"	XIII	Civil jurisdiction of Jagirdars
"	XV	Village Patahs
"	II	Realization of Revenue
"	V	Hereditary Officers

¹ Act 15 of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from the schedule.—

Enactments omitted

Repealing Acts

Bom Reg	XII of 1827, preamble	} Act	XII of 1891
" "	XVI of 1827		
" "	XXI of 1827, ss 1 10, 40, 54 73		
" "	XXII of 1827, ss. 18 20, 45 47	"	XIII of 1895

² Certain words were omitted by s 2 and Sch of the Repealing Act, 1927 (XII of 1927)

³ Bom Code

⁴ Bom Reg 4 of 1827, s 69 and Bom Regs 5 of 1830, 15 of 1831, 2 of 1832 and 5 of 1833, are repealed locally by the Bombay Land-revenue Code, 1879 (Bom Act 5 of 1879), Bom Code.

(b).—ACTS OF THE SUPREME COUNCIL RELATING TO THE BOMBAY PRESIDENCY.¹

Year and Number.		Subject.
² 1838,	XVI	Judiciary.
³ „	XVIII	Sureties.
³ {	1838, XIX	Coasting Vessels.
	1839, XX	Revenue.
	1840, XV	Agents of Foreign Sovereigns.
³ {	1842, XIII	Revenue.
	„ XVII	Revenue Commissioners.
³ 1844,	XIX	Abolition of Town Duties.
⁴ 1846,	I	Pleaders.
³ „	III	Sections 1, 5 and 6—Boundary Marks.
⁴ 1853,	XX	Pleaders.

¹ Act 15 of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted.]		Repealing Acts.
Act	XI of 1843	} Act XII of 1891.
„	III of 1852	
„	XXI of 1852	
„	X of 1855, s. 10	„ XI of 1901.
„	VIII of 1856	„ IX of 1894.
„	XX of 1864	„ VIII of 1890.

² Bom. Code.

³ Acts 18 of 1838, 13 and 17 of 1842 and 3 of 1846 are repealed locally by the Bombay Land-revenue Code, 1879 (Bom. Act 5 of 1879), Bom. Code.

⁴ As to the repeal of Acts 1 of 1846 and 20 of 1853 in the Bombay Presidency, see ss. 1 and 42 of the Legal Practitioners Act, 1879 (18 of 1879). The Acts of 1846 and 1853 are printed in Vol. 1 of the General Acts.

FOURTH SCHEDULE.¹

(See section 6.)

(a) —BENGAL REGULATIONS (LOWER PROVINCES).

Year and Number			Subject
1793,	I		Perpetual Settlement.
"	II		Collection of Land revenue.
"	VIII		Rules for Decennial Settlement
"	XI		Native laws of inheritance to Revenue paying land
"	XIX		Title to lands exempt from Revenue.
"	XXXVII		Title to lands exempt from Revenue under badshāhī grants.
"	XXXVIII		Section 1—Preamble . Section 2—Prohibition of loans by Covenanted Servants.
1794,	III		Sections 13, 16, 17, 18, 19 and 20—Arrears of Revenue
1799,	V		Wills and Intestacies of Natives.
1800,	VIII		Pargana Register of Lands
1801,	I		Arrears of Revenue . Division of Joint Estates.
1804,	X		Punishment by Courts martial of certain State offences
1806,	XI		Passage of Troops.
1810,	XIX		Maintenance of Bridges, etc ; Escheats.

¹ Act 15 of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule —

Enactments omitted		Repealing Acts	
Ben Reg	XLVIII of 1793	} Act	XII of 1891.
" "	III of 1794, s 12		" XII of 1876
" "	LVIII of 1795, ss 3 & 4	} "	XII of 1891.
" "	XV of 1797		XIII of 1839.
" "	I of 1798	} "	XII of 1891.
" "	LVII of 1806, ss. 7 & 8		XII of 1891.
" "	XX of 1810.	} "	VI of 1878
" "	XI of 1811		" XII of 1891.
" "	XX of 1814.	} "	X of 1882
" "	V of 1817.		XII of 1876
" "	XX of 1817, ss 28 & 32	} "	
" "	VI of 1819.		
" "	XX of 1825	} "	
" "	IV of 1829		

² Ben. Code.

³ Repealed by s 3 and Sch of the Special Laws Repeal Act, 1922 (4 of 1922).

Year and Number.		Subject.
1812,	V	Collection of Land-revenue.
"	XI	Removal of Foreign Emigrants.
1817,	XX	Section 29—Criminal process in Salt and Opium Departments: Section 30, clauses 1, 2 and 5—Building forts; Collecting sepoy and stores; Encroaching on roads.
1818,	III	State Prisoners.
1819,	II	Resumption of Revenue-free lands.
1821,	IV	Powers of Collectors and Magistrates.
1822,	III	Boards of Land-revenue.
"	XI	Section 36—Khás management of purchases by Government: Section 38—non-liability of Government for errors of Courts.
1823,	VI	Indigo Contracts.
"	VII	Prohibition of loans to Covenanted Civil Servants.
1825,	VI	Passage of Troops.
"	IX	Defaulting Malguzars.
"	XI	Alluvion and diluvion.
"	XIII	Settlement of resumed Lákhiráj land.
"	XIV	Authority to confirm Lákhiráj tenures: Native grants.
1827,	III	Section 5—Evidence.
"	V	Management of Estates under attachment.
1828,	III	Appeals from decisions of Revenue Authorities.
"	IV	Section 1 and section 2, clause 4—Time during which Collectors are to be considered engaged in making settlements.
1829,	I	Commissioners of Revenue and Board of Revenue.
"	XVII	Widow-burning.
1830,	V	Sections 1 and 5—Indigo Contracts.

¹ Repealed by the Bengal Board of Revenue Act, 1913 (Ben. Act 2 of 1913), Ben. Code.

² Ben. Code.

(b).—ACTS OF THE SUPREME COUNCIL RELATING TO THE LOWER PROVINCES.¹

Year and Number		Subject.
1836,	X	Indigo Contracts.
"	XXI	Creating Zilas
1841,	XII	Section 2—No Interest on arrears of Land-revenue
1847,	IX	Assessment of new lands.
1848,	XX	Land revenue
1850,	XLIV	Board of Revenue.
1855,	XXXII	Embankments
1856,	XII	Civil Court Amins.
1857,	XIII	Opium.
1858,	XXXI	Settlement of Alluvion.
1859,	XI	Sales for Arrears of Revenue.

¹ Act 15 of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted.		Repealing Acts.
Act XX of 1836	}	Act XII of 1891.
" XI of 1838		" I of 1903.
" XIX of 1853, s. 26	}	" XII of 1891.
" XX of 1859		" VIII of 1890.
" XXI of 1856		" XII of 1891.
" XL of 1858	}	
" XXIII of 1860		

² Ben. Code.

³ Repealed by the Bengal Board of Revenue Act, 1913 (Bengal Act 2 of 1913), Ben. Code.

⁴ Act 32 of 1855 has been repealed locally in Bengal by the Bengal Embankments Act, 1873 (Bengal Act 6 of 1873). See Ben. Code.

FIFTH SCHEDULE

(See section 7.)

WESTERN PROVINCES).¹

(a).—BENGAL REGULATIONS (NORTH-WESTERN PROVINCES).

Year and Number.		Subject.
1793, XXXVIII	Section 1—preamble: Section 2—prohibition of loans by Covenanted Servants.	Administration to Natives.
1799, V	Wills and Administration by Courts-martial of certain State	
1804, X	Punishment of Troops.	
1806, XI	Passage of Foreign Emigrants.	
1812, XI	Removal of Prisoners.	
1818, III	State Policy—Non-liability of Government for	
1822, XI	Section of Courts.	
1823, VI	Indigo Contracts.	
" VII	Prohibition of loans to Covenanted Civil	
1825, VI	Passage of Troops.	
" XI	Alluvion and Dereliction.	
1827, III	Section 5—Evidence.	
" V	Management of Estates under Attachment.	
1829, XVII	Widow burning.	
1830, V	Section 1 and 5—Indigo Contracts.	
1831, XI	Section 1, 2, 5, 6—Police-powers of Tahsil-	
1833, IX	Deputy Collectors.	

is it relates to the following enactments to those enactments have been

¹ Act 15 of 1874 having been repealed so far as it relates to those enactments, by the Acts noted against each, the reference is omitted from this schedule:—

Enactments omitted.

Ben. Reg.	I of 1798	
" "	XVII of 1806, ss. 7 & 8	
" "	XIX of 1810	
" "	XX of 1810	
" "	V of 1817	
" "	VI of 1819	
" "	XX of 1825	
" "	VI of 1831, s. 6	
" "	XI of 1831, ss. 4 & 8	
" "	I of 1833	

Repealing Acts.

Act	XII of 1891.
"	XIII of 1889.
"	XII of 1891.
"	X of 1882.
"	XII of 1891.
"	VIII of 1875.

² U. P. Code.³ Repealed by s. 3 and Sch. of the Special Laws Repeal Act, 1922 (4 of 1922).

(b).—ACTS OF THE SUPREME COUNCIL RELATING TO THE NORTH-WESTERN PROVINCES.¹

Year and Number.		Subject.
1836,	X	Indigo Contracts.
1854,	XVI	Police.
1856,	XII	Civil Court-Amins.
"	XX	Chaukidars.
1857,	XIII	Opium.

SIXTH SCHEDULE.

(See sections 2, 3, 4, 5, 6 and 7.)

PART I.

SCHEDULED DISTRICTS, MADRAS.

1.—In Ganjam.

- (1) The Gumsur Maliahs, including Chokapad.
- (2) The Surada Maliahs.
- (3) The Chinna Kimedi Maliahs.
- (4) The Pedda Kimedi Maliahs.
- (5) The Bodaguda Maliahs.
- (6) The Surangi Maliahs.
- (7) The Parla Kimedi Maliahs.
- (8) The Muttás of Koradá and Ronaba (otherwise called Sriharma).
- [(9) *The Chighatti Maliah.*] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

¹ Act 15 of 1874 having been repealed so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted.		Repealing Acts
Act XXI of 1836	} Act I of 1903.	
" XIX of 1833, s. 26		
" XL of 1858		" VIII of 1890.

² U. P. Code.

³ Act XX of 1856 has been repealed in United Provinces by United Provinces Act 2 of 1914, s. 41.

- (10) The Juradá Maliah.
- (11) The Jalantra Maliah.
- (12) The Mandasa Maliah.
- (13) The Budarashinghi Maliah.
- (14) The Kuttingia Maliah.

II.—In Vizagapatam.

- (1) The Jeypur Zamíndarí.
- (2) Golconda Hills, west of the River Boderu.
- (3) The Madugol Maliahs.
- (4) The Kasipur Zamíndarí.
- (5) The Panchipenta Maliahs.
- (6) Mondemkolla, in the Merangi Zamíndarí.
- ²[(7) The Konda Muttá of Merangi.]
- (8) The Gumma and Konda Muttás of Kurpam.
- (9) The Kottam, Rám and Konda Muttás of Pálkonda.

III.—In the Godávári District.¹

- (1) The Bhadráchalam Táluq.
- (2) The Rakapilli Táluq.
- (3) The Rampá Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY.

I.—The Province of Sindh.

II.—[*The Panch Maháls.*] *Rep. by the Panch Maháls Laws Act, 1885*
(VII of 1885), with effect from the 1st May 1895.

¹ The Ducharti and Guditeru Muttás in the Golconda Hills have been transferred from the Vizagapatam to the Godávári District. See Fort St. George Gazette, 1881, Pt. I, p. 336.

Certain villages and estates in the Godávári District have become Scheduled Districts for the purposes of the Scheduled Districts Act, 1874, see Appendix B to that Act, printed, *supra*; but they are not "scheduled districts" within the meaning of the Laws Local Extent Act, 1874.

² This clause was substituted for the original clause ("The Konda Muttá of Belgám") by the Repealing and Amending Act, 1891 (12 of 1891).

III.—Aden.¹

IV.—The villages belonging to the following Mehwasi Chiefs:—

- (1) The Párvī of Kathī.
- (2) The Párvī of Nál.
- (3) The Párvī of Singpur.
- (4) Walwī of Gaohálí.
- (5) The Wassáwa of Chikhlí.
- (6) The Párvī of Nawalpur.

PART III.

SCHEDULED DISTRICTS, BENGAL.

I.—The Jalpáiguri and Darjeeling Districts.²

II.—The Hill Tracts of Chittagong.

III.—The Santhál Parganas.

IV.—The Chutrá Nágpur Division.³V.—The Maháls of Angul and Banki.⁴

¹ In all enactments and rules heretofore or hereafter passed and made by the Governor General in Council or the Governor of Bombay in Council, the word 'Aden' shall, unless there is something repugnant in the subject or context, or the word is used with reference to Her Majesty's Vice-Admiralty Court at Aden, be construed to mean the Settlement of Aden and such of its dependencies for the time being, inclusive of the villages of Shukh Othman Imad und Hiswa, the Island of Perim and Little Aden, as are administered by the Governor of Bombay in Council, see s. 2 of the Aden Laws Regulation, 1891 (2 of 1891), Bom. Code.

² "Districts" was substituted for "Divisions" by the Repealing and Amending Act, 1891 (12 of 1891).

³ The Thanas of Raipur and Khattra, which formerly formed portion of the Chutrá Nágpur Division, have been transferred to the District of Bankura, and ceased to be a Scheduled District on the 1st October 1879. See the Raipur and Khattra Laws Act, 1879 (19 of 1879), Ben. Code.

The Estate of Porahat now forms part of the Chutrá Nágpur Division Scheduled District for the purposes of the Scheduled Districts Act, 1874, see the Porahat Estate Act, 1893 (2 of 1893), s. 3 (B and O Code), but it is not a "scheduled district" within the meaning of the Laws Local Extent Act, 1874.

⁴ The Mahál of Banki ceased to be a Scheduled District on the 1st April, 1882, see the Banki Laws Act, 1881 (25 of 1881), (B and O Code); and that Act declared that all enactments then in force in Cuttack, but not in Banki, should forthwith be in force in Banki, and that all enactments then in force in Banki, but not in Cuttack, should thereupon be deemed to have been repealed as regards Banki.

The Khondmals in Orissa, which now form part of the Angul District, see the Angul Laws Regulation, 1913 (3 of 1913), B and O Code, have become a Scheduled District for the purposes of the Scheduled Districts Act, 1874 (14 of 1874), see Appendix B to that Act, printed, *supra*, but they are not "scheduled districts" within the meaning of the Laws Local Extent Act, 1874.

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

I.—[*The Jhānsī Division, comprising the Districts of Jhānsī, Jalauñ and Lalatpur.*] *Rep. by the North-Western Provinces and Oudh Act, 1890 (XX of 1890), section 8 (1), with effect from the 1st April 1891.*

II.—The Province of Kumáon and Garhwál.

III.—The Taráí Parganas, comprising—Bázipúr, Kashípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúri, Nának-Matthá and Bilherí.

IV.—In the Mirzápur District—

- (1) The tappás of Agori Khás and South Kon in the Pargana of Agori.
- (2) The tappá of British Singrauli in the Pargana of Singrauli.
- (3) The tappás of Phulwá, Dudhi and Barhá in the Pargana of Bichipár.
- (4) The portion lying to the South of the Kaimor Range.

[V.—*The Family Domains of the Mahárajá of Benares, comprising the following parganas:—Bhadohi and Kheyra Mángror in the Mirzápur District; Kaswá Rajá in the Benares District.*] *Rep. by the Benares Family Domains Act, 1881 (XIV of 1881), s. 14, with effect from the 24th September 1881.*

VI.—The tract of country known as Jaunsar Báwar in the Dehrá Dún District.

PART V.

SCHEDULED DISTRICTS, PUNJAB.

The Districts of ¹Hazára, Pesháwar, Kohat, Bannu, Dera Ismail Khán, Dera Gházi Khán, Lahaul and Spiti.

¹ Portions of the districts of Hazára, Bannu and Dera Ismail Khán and the districts of Pesháwar and Kohat now form the N.-W. Frontier Province, *see Gazette of India, 1901, Pt. I, p. 857.*

PART VI.

¹SCHEDULED DISTRICTS, CENTRAL PROVINCES.*Chattisgarh Zamindáris.*

- | | |
|---------------------|------------------|
| 1. Khariár. | 13. Mátin. |
| 2. Bindrá Nawagarh. | 14. Uprorá. |
| 3. Sahezipur. | 15. Kendá. |
| 4. Gándai. | 16. Láphá. |
| 5. Silhetí. | 17. Chhúrí |
| 6. Barhaspúr. | 18. Korbá. |
| 7. Thákurtolá. | 19. Chapá. |
| 8. Lohára. | 20. Borá Sámbar. |
| 9. Gondardehí. | 21. Phúljar. |
| 10. Fingeswar. | 22. Koláhirá. |
| 11. Pándariá. | 23. Rámpur. |
| 12. Pendrá. | |

Chanda Zamindáris.

- | | |
|---------------------|-------------------|
| 1. Ahírf. | 11. Muramgáon. |
| 2. Ambágarh Chauki. | 12. Pánábáras. |
| 3. Aundhí. | 13. Palasgarh. |
| 4. Dhanorá. | 14. Rángi. |
| 5. Dudhmálá. | 15. Sirsundi. |
| 6. Gewardá. | 16. Sonsarí. |
| 7. Jhárápáprá. | 17. Chándálá. |
| 8. Khutgáon. | 18. Gilgáon. |
| 9. Koráchá. | 19. Páwi Mutánda. |
| 10. Kotgal. | 20. Pategáon. |

Chhinduárá Jágirdáris.

- | | |
|----------------|--------------------|
| 1. Haráí. | 7. Pachmarhí. |
| 2. Chháter. | 8. Partábgarh. |
| 3. Gorakhghát. | 9. Almod. |
| 4. Gorpáni. | 10. Sonpur. |
| 5. Bakhtagarh. | 11. Bariám Pagará. |
| 6. Bardágarh. | |

PART VII.

The Chief Commissionership of Coorg.

¹The taluqs of Nugur, Albaka and Cherla which were transferred to the Madras Presidency with effect from 1st July 1909 had, from the 17th January 1905, become scheduled districts within the meaning of the Scheduled Districts Act, 1874 (see Appendix B to that Act, *supra*).

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.¹

PART IX.

The Chief Commissionership of Ajmer and Merwára.

PART X.

The Chief Commissionership of Assam.²

PART XI.

The Hill Tracts of Arakan.³

PART XII.

⁴The Pargana of Mánpur.

PART XIII. [*The Cantonment of Morar.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

(SEVENTH SCHEDULE.—*Enactments Repealed.*) *Repealed.*

¹ The Little Cocos Island has been transferred to the administration of the Governor of Burma and ceased to be a Scheduled District on the 29th November 1882, *see* the Little Cocos and Preparis Islands Laws Act, 1883 (8 of 1883), Bur. Code.

² The Lusháí Hills, which include the North and South Lusháí Hills and the Mokokchang Sub-division of the Nagá Hills District, have now become Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (14 of 1874), *see* Appendix B to that Act, *supra*, but they are not Scheduled Districts within the meaning of the Laws Local Extent Act, 1874.

³ These tracts are in Lower Burma. UPPER BURMA (with the exception of the Shan States) has become a Scheduled District for the purposes of the Scheduled Districts Act, 1874 (14 of 1874), *see* Appendix B to that Act, *supra*; but it is not a "Scheduled district" within the meaning of the Laws Local Extent Act, 1874.

Under the operation of the Burma Laws Act, 1898 (13 of 1898), s. 14, Bur. Code, portions of Lower Burma may become Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (14 of 1874).

The Chief Commissionership of BRITISH BALUCHISTAN has become a Scheduled District for the purposes of the Scheduled Districts Act, 1874, *see* Appendix B to that Act, *supra*; but it is not a "scheduled district" within the meaning of the Laws Local Extent Act, 1874.

⁴ The Pargana of Manpur has now been made a Chief Commissionership; *See* Proclamation published with the Notification No. 310—1, dated 11th June, 1924, Gazette of India, 1924, Pt. I, p. 483.

ACT No IX OF 1875 ¹

[2nd March 1875]

An Act to amend the Law respecting the age of majority

WHEREAS, in the case of persons domiciled in British India, it is Preamble expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists, It is hereby enacted as follows —

1 This Act may be called the Indian Majority Act, 1875

Short title

It extends to the whole of British India and, so far as regards sub Local extent
jects of Her Majesty, to the dominions of Princes and States in India
in alliance with Her Majesty,

and it shall come into force and have effect only on the expiration Commence-
of three months from the passing thereof ment and
operation.

2 Nothing herein contained shall affect—

Savings

(a) the capacity of any person to act in the following matters
(namely),—marriage, dower, divorce and adoption,

¹ For the Statement of Objects and Reasons see Gazette of India 1874 Pt V p 153 for Proceedings in Council see *ibid* Supplement p 668 and Extra Supplement, dated 12th May 1874 p 4 and *ibid* 1875, Supplement p 333

This Act has been declared by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the following Scheduled Districts, namely —

The Districts of Hazáribágh
Lohárdaga and Manbhum
and Pargana Dhálbhum and
the Kolhán in the District
of Singbhum [The Lohar
daga District included at this
time the present District of
Palamau which was separat-
ed in 1894 Lohárdaga is
now called the Ranchi
District Calcutta Gazette,
1899, Pt 1, p 44]

See Gazette of India 1881 Pt I, p 504

The North Western Provinces
Taráí

Ditto 1876, Pt 1, p 50

It has been declared in force in—

British Baluchistan, by the British Baluchistan Laws Regulation, 1913 (2 of 1913), see Bal Code

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1893 (XIII of 1893), s 4 (1) and Sch I, Bur Code,

Pargana of Manpur, by the Manpur Laws Regulation, 1926 (2 of 1926), s 2

It has been applied to the Baluchistan Agency Territories, see Gazette of India, 1897, Pt 1, p 27

- (b) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or
- (c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

Age of majority of persons domiciled in British India.

3. Subject as aforesaid, [every minor of whose person or property or both a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure,¹ has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age]² shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865)³ or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

Age of majority how computed.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(a) Z is born in British India on the first day of January 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(b) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

(c) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868.

¹ For the Code of Civil Procedure see now Act 5 of 1908.

² These words were substituted for the words "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards" by s. 52 of the Guardian and Wards Act, 1890 (8 of 1890).

³ See now the Indian Succession Act, 1925 (39 of 1925).

ACT No XIII of 1875¹

[15th March 1875.]

An Act to amend the law relating to "[Court Fees]

70 * * * * * whereas it is ⁴expedient to amend the Court-fees Act, Preamble. 1870, as to probates, letters of administration and certificates of administration, It is hereby enacted as follows —

1. [Addition to Act X of 1865, section 3] *Rep by the Repealing and Amending Act, 1891 (XII of 1891)*

[Sections 2, 3, 4, and 5 were repealed by the Probate and Administration Act, 1903 (VIII of 1903), s 4, General Acts, Vol IV]

70. 6⁵ After section 19 of the Court-fees Act, 1870, the following chapter shall be inserted (namely) — Addition to Act VII of 1870

"CHAPTER IIIA [Not reprinted—See Act VII of 1870 in Vol I]

¹ Short title, The Probate and Administration Act 1875 See the Indian Short Titles Act, 1897 (14 of 1897)

For the Statement of Objects and Reasons see Gazette of India, 1874, Pt V, p 246, for the Further Report of the Select Committee, see *ibid*, 1875, Pt V, p 43, for Proceedings in Council see *ibid*, 1874 Supplement, pp 1871 and 1881, and *ibid*, 1875, Supplement, p 435

This Act has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts namely —

The Districts of Hazaribagh, Lohardaga and Monbhumi, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum [The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894, Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt I, p 44]

See Gazette of India, 1931 Pt I, p 504

The North Western Provinces

Ditto

1876, Pt I, p 505

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s 4 (1) and Sch I, Bur Code,

the Santhal Parganas by the Santhal Pargana Settlement Regulation (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899)

² These words were substituted for the words "Probates and Letters of Administration" by s 2 and Sch I of the Repealing and Amending Act, 1914 (10 of 1914)

³ This portion of the Preamble was repealed by s 3 and Sch II, *ibid*

⁴ The word "also" was repealed by s 3 and Sch II, *ibid*

⁵ So much of this section as directs the insertion of s 19H in the Court-fees Act, 1870 (7 of 1870), has been repealed by the Repealing and Amending Act, 1991 (12 of 1991)

(b) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

Age of majority of persons domiciled in British India.

3. Subject as aforesaid, [every minor of whose person or property or both a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure,¹ has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age]² shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865)³ or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

Age of majority how computed.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(a) Z is born in British India on the first day of January 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(b) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

(c) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868.

¹ For the Code of Civil Procedure see now Act 5 of 1908.

² These words were substituted for the words "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards" by s. 52 of the Guardian and Wards Act, 1890 (8 of 1890).

³ See now the Indian Succession Act, 1925 (39 of 1925).

ACT No XIII of 1875¹

[15th March 1875.]

An Act to amend the law relating to² [Court Fees]

* * * * * whereas it is "expedient to amend the Court-fees Act, Preamble
1870, as to probates, letters of administration and certificates of ad-
ministration, It is hereby enacted as follows —

1. [Addition to Act X of 1865, section 3] Rep by the Repealing
and Amending Act, 1891 (XII of 1891)

[Sections 2, 3, 4, and 5 were repealed by the Probate and Administra-
tion Act, 1903 (VIII of 1903), s 4, General Acts, Vol IV]

6.³ After section 19 of the Court-fees Act, 1870, the following Addition to
chapter shall be inserted (namely) — Act VII of
1870

"CHAPTER IIIA [Not reprinted—See Act VII of 1870 in Vol I]

¹ Short title The Probate and Administration Act 1875 See the Indian
Short Titles Act, 1897 (14 of 1897)

For the Statement of Objects and Reasons see Gazette of India, 1874, Pt V,
p 246, for the Further Report of the Select Committee, see *ibid*, 1875, Pt V,
p 43, for Proceedings in Council see *ibid*, 1874 Supplement, pp 1871 and 1981,
and *ibid*, 1875, Supplement p 435

This Act has been declared, by notification under s 3 (a) of the Scheduled
Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts,
namely —

The Districts of Hazaribagh,
Lohardaga and Manbhum,
and Pargana Dhalbhum and
the Kolhan in the District
of Singhbhum [The District
of Lohardaga included at
this time the present District
of Palamau, which was
separated in 1894, Lohar-
daga is now called the
Ranchi District, Calcutta
Gazette, 1899, Pt I, p 44]

See Gazette of India, 1931, Pt I, p 504

The North Western Provinces
Farrukh

Ditto 1876, Pt I, p 505

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act,
1898 (13 of 1898), s 4 (1) and Sch I, Bur Code,

the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of
1872), as amended by the Santhal Parganas Justice and Laws Regu-
lation, 1899 (3 of 1899)

² These words were substituted for the words "Probates and Letters of Ad-
ministration" by s 2 and Sch I of the Repealing and Amending Act, 1914 (10
of 1914)

³ This portion of the Preamble was repealed by s 3 and Sch II, *ibid*

⁴ The word "also" was repealed by s 3 and Sch II, *ibid*

⁵ So much of this section as directs the insertion of s 19H in the Court fees
Act, 1870 (7 of 1870), has been repealed by the Repealing and Amending Act, 1891
(12 of 1891)

ACT No. XVIII or 1875.¹

[13th October 1875.]

An Act for the improvement of Law Reports.

WHEREAS it is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality; And whereas, with a view to furthering these objects, ²[it is proposed] to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty-fourth and twenty-fifth of Victoria,³ chapter 104⁴ [and by the Chief Courts of Oudh and Sind⁵]; It is hereby enacted as follows:—

- Short title.** 1. This Act may be called the Indian Law Reports Act, 1875.
- Local extent.** It extends to the whole of British India;
- Commencement.** And it shall come into force on such day as the Governor General in Council notifies in this behalf in the Gazette of India.
2. [*Repeal of Act II of 1875.*] *Rep. by the Repealing Act, 1876 (VII of 1876).*
- Authority given only to authorized reports.** 3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided by any of the said High Courts ⁴[or by the Chief Court of Oudh] ⁵[or the Chief Court of Sind] on or after the said day, other than a report published under the authority of ²[any Local Government].
- Authority of judicial decisions.** 4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1875, Pt. V, p. 139; for Proceedings in Council, see *ibid.*, Extra Supplement, dated 31st July 1875, p. 5, and *ibid.*, Extraordinary, dated 25th October 1875, p. 1.

This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. [The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44.] See Gazette of India, 1881, Pt. I, p. 504.

² These words were substituted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

³ The Indian High Courts Act, 1861, which is the enactment referred to, was repealed by the Government of India Act, 1915 (5 and 6 Geo. 5, Ch. 61.)

⁴ These words were inserted by s. 2 and Sch. of the Oudh Courts (Supplementary) Act, 1925 (32 of 1925).

⁵ These words are to be read into the Act when the Sind Courts (Supplementary) Act (34 of 1926) comes into force.

ACT No IX of 1876 ¹

[28th March 1876.]

An Act to enable the Government of India to declare certain coins of Native States to be a legal tender in British India

WHEREAS it is expedient to enable the Governor General in Council Preamble. to declare that a tender of payment of money, if made in certain coins made for or issued by Native States, shall be a legal tender in British India, It is hereby enacted as follows —

1. This Act may be called the Native Coinage Act, 1876

Short title.
Local extent.

It extends to the whole of British India,

* * * *

2. In this Act "Native State" means any State in India which is Interpretation clause. under the protection or political control of Her Majesty, or of which the Government shall have acknowledged the supremacy of the British Crown

3. Subject to the provisions of section 4, the Governor General in Council may, from time to time, by notification in the Gazette of India, declare that a tender of payment of money, if made in the coins, or the coins of any specified metal, made under this Act, for any Native State, shall be a legal tender in British India,³ Power to declare that the coins of a Native State shall be legal tender.

II of

and the provisions of the Indian Coinage Act, 1870,⁴ shall apply to the coins to which such notification refers, so far as such provisions are applicable thereto, and save as expressly provided by such notification

4. The power conferred by the first clause of section 3 shall be exercisable only when the coins referred to in such notification comply with the following conditions (that is to say)— When such power may be exercised.

in the case of coins of gold, silver or bronze,

(a) their fineness is identical with that for the time being prescribed by law for coins of the Government of India of the same metal,

¹ For the Statement of Objects and Reasons, see Gazette of India, 1876, Pt V, p 36, for Proceedings in Council, see *ibid*, Supplement, pp 178, 192 and 405

This Act has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kollan in the District of Palaman, which was separated in 1894, District, Cileutta, Gazette, 1899, 1881, Pt I, p 501 of Ranchi of India,

² The words "And it shall come into force at once" were repealed by the Repealing and Amending Act, 1914 (10 of 1914)

³ For notifications issued under this section in respect of certain coins of (1) the Alwar State, (2) the Bikanir State (3) the Dhar State, and (4) the Sailana State see G R and O, Vol 11, pp 21—33

As to Bhopal coinage see the Bhopal Coinage Act, 1897 (11 of 1897), Rep Act 1 of 1903

⁴ See now the Indian Coinage Act, 1906 (3 of 1906)

in the case of coins whether of gold, silver, bronze or copper,

- (b) they are identical in weight with some coins of the Government of India of the same metal, which may for the time being be legally coined at any Mint of the Government of India, or bear such relation thereto as is approved by the Governor General in Council;
- (c) the devices upon their obverse and reverse differ from the devices on coins now made or issued by any such Native State, and have been approved by the Governor General in Council;
- (d) upon each of such coins its value in money of the Government of India is inscribed in the English language;
- (e) the Native State for which they are coined has undertaken to abstain during a term of not less than thirty years from the date of the notification, from coining in its own Mint gold, silver, bronze or copper, as the case may be, and has also undertaken that no coins resembling coins for the time being a legal tender in British India shall, after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction;
- (f) such State has formerly declared that a tender of payment of money, if made in coins of the Government of India of the same metal, shall, in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India;
- (g) such State has also agreed that the law and rules for the time being in force respecting the cutting and breaking of coin of the Government of India reduced in weight by reasonable wearing or otherwise, or counterfeit, or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them; and
- (h) such State has also agreed not to issue the same coins below their nominal value, and not to allow any discount or other advantage to any person in order to bring them into circulation.

Native States
authorized to
send metal to
British India
Mint for
coinage.

5. It shall be lawful for any such State to send to any Mint in British India metal to be made into coin under this Act; and, subject to the Mint rules for the time being in force, and to the provisions hereinafter contained, the Mint-master shall receive such metal and convert it into coin, provided that it be fit for coinage.

Nothing herein contained shall be deemed to entitle any such State to have coins made under this Act at any Mint of the Government of India of any metal which is not for the time being legally coined at such Mint

6. The Governor General in Council may impose on any metal sent to a Mint for coinage under this Act the duty (if any) leviable on the same metal under the Indian Coinage Act, 1870,¹ and also a charge sufficient to defray the expenses of coinage over and above the expenses of assay and refining, and the Mint-master shall coin such metal at the charge so imposed

Power to impose a charge for coinage.

7 The Governor General in Council may, from time to time, with reference to the reasonable requirements of the population of any Native State, fix the maximum number of any coins of any particular metal that shall be coined under this Act

Power to limit number of coins to be made under this Act for any Native State

ACT No XVI of 1876 ²

[5th October 1876.]

An Act to amend the Stage Carriages Act

WHEREAS Act No XVI of 1861 (*for licensing and regulating Stage Carriages*)³ does not apply to carriages drawn by camels or oxen, and it is expedient to render it applicable to such carriages, It is hereby enacted as follows —

1. For the third sentence of section 21 of the said Act, the following shall be substituted (that is to say)

Amendment of Act XVI of 1861, s 21

“All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India”

2. [Local extent of Act XVI of 1861] Rep by the Stage Carriages Act (1861) Amendment Act, 1898 (I of 1898).

¹ See now the Indian Coinage Act, 1906 (3 of 1906)

² Short title The Stage Carriages Act (1861) Amendment Act, 1876 See the Indian Short Titles Act, 1897 (14 of 1897)

³ For the Statement of Objects and Reasons, see Gazette of India, 1876, Pt V, p 552, for Proceedings in Council, see *ibid*, Supplement, pp 717, 753 and 1090

This Act has been declared by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts — namely —

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum See Gazette of India, 1876, Pt I, p 301 The District of Lohardaga included at this time the present District of Palamu, which was separated in 1891, Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44

As being part of Act 16 of 1861, this Act is also in force in the North-Western Provinces Terai, see first foot-note under that Act, General Acts, Vol I

⁴ Short title, The Stage Carriages Act, 1861

ACT No. XIX OF 1876.¹

[16th December 1876.]

An Act for the better control of public dramatic performances.

Preamble.

Whereas it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Dramatic Performances Act, 1876.

Local extent.

It extends to the whole of British India;

2* * * *

“Magistrate”
defined.

2. In this Act “Magistrate” means, in the Presidency-towns, a Magistrate of Police, and elsewhere the Magistrate of the district.

Power to
prohibit
certain dra-
matic per-
formances

3. Whenever the Local Government is of opinion that any play, pantomime or other drama performed or about to be performed in a public place is—

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government established by law in British India, or

(c) likely to deprave and corrupt persons present at the performance,

the Local Government, or outside the Presidency-towns and Rangoon the Local Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance.

Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a “public place” within the meaning of this section.

Power to
serve order
of prohibi-
tion.

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room or place in which such performance is intended to take place; and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Penalty for
disobeying
order.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1876, Pt. V, p. 347; for Proceedings in Council, see *ibid*, Supplement, pp. 328, 343 and 1341.

This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mánthum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. See Gazette of India, 1886, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Pálamau, which was separated in 1894; Lohárdaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.

It has, with modifications and with the exception of s. 12, been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code.

² The words “And it shall come into force at once” were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be struck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited. Power to notify order

6. Whoever after the notification of any such order—

(a) takes part in the performance prohibited thereby or in any performance substantially the same as the performance so prohibited, or

Penalty for disobeying prohibition

(b) in any manner assists in conducting any such performance, or

(c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

(d) being the owner or occupier, or having the use of any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

7. For the purpose of ascertaining the character of any intended public dramatic performance, the Local Government, or such officer as it may specially empower in this behalf, may apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Local Government or such officer thinks necessary.

Power to call for information

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

8. If any Magistrate has reason to believe that any house, room or place is used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of Police to enter with such assistance as may be requisite, by night or by day, and by force, if necessary, any such house, room or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses and other articles found therein and reasonably-suspected to have been used, or to be intended to be used, for the purpose of such performance.

Power to grant warrant to Police to enter and arrest and seize.

9. No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code.

Saving of prosecutions under Penal Code, sections 124A and 294.

10. Whenever it appears to the Local Government that the provisions of this section are required in any local area, it may

Power to prohibit dramatic

¹ For notifications by the Government of Bombay under this section, see Bombay Local Rules and Orders, Vol I

² The words "with the sanction of the Governor General in Council" were omitted by the Decentralization Act, 1914 (4 of 1914)

performance
in any local
area, except
under
license.

declare, by notification in the local official Gazette, that such provisions are applied to such area from a day to be fixed in the notification.

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such Local Government, or such officer as it may specially empower in this behalf.

The Local Government may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Local Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment: and if thereafter he does or willingly permits any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Powers
exercisable
by Governor
General.
Exclusion
of perform-
ances at
religious
festivals.

11. The powers conferred by this Act on the Local Government may be exercised also by the Governor General in Council.

12. Nothing in this Act applies to any *jatras* or performances of a like kind at religious festivals.

THE SPECIFIC RELIEF ACT, 1877.

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local Extent.
Commencement.
2. [*Repealed.*]
3. Interpretation-clause.
Words defined in Contract Act.
4. Savings.
5. Specific relief how given.

¹ This section does not apply to Upper Burma, see s. 4 (1) and Sch. 1 of the Burma Laws Act, 1898 (13 of 1898), Bur. Code.

SECTIONS.

6. Preventive relief.
7. Relief not granted to enforce penal law.

PART II.

OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a) Possession of Immoveable Property.

8. Recovery of specific immoveable property.
9. Suit by person dispossessed of immoveable property.
10. Recovery of specific moveable property.
11. Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a) Contracts which may be specifically enforced.

12. Cases in which specific performance enforceable.
13. Contracts of which the subject has partially ceased to exist.
14. Specific performance of part of contract where part unperformed is small.
15. Specific performance of part of contract where part unperformed is large.
16. Specific performance of independent part of contract.
17. Bar in other cases of specific performance of part of contract.
18. Purchaser's rights against vendor with imperfect title.
19. Power to award compensation in certain cases.
20. Liquidation of damages not a bar to specific performance.

(b) Contracts which cannot be specifically enforced.

21. Contracts not specifically enforceable.

(c) Of the Discretion of the Court.

22. Discretion as to decreeing specific performance.

SECTIONS.

(d) *For whom Contracts may be specifically enforced.*

23. Who may obtain specific performance.

(e) *For whom Contracts cannot be specifically enforced.*

24. Personal bars to the relief.

25. Contracts to sell property by one who has no title, or who is a voluntary settler.

(f) *For whom Contracts cannot be specifically enforced, except with a Variation.*

26. Non-enforcement except with variation.

(g) *Against whom Contracts may be specifically enforced.*

27. Relief against parties and persons claiming under them by subsequent title.

(h) *Against whom Contracts cannot be specifically enforced.*

28. What parties cannot be compelled to perform.

(i) *The effect of dismissing a Suit for Specific Performance.*

29. Bar of suit for breach after dismissal.

(j) *Awards and Directions to execute Settlements.*

30. Application of preceding sections to awards and testamentary directions to execute settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When instrument may be rectified.

32. Presumption as to intent of parties.

33. Principles of rectification.

34. Specific enforcement of rectified contract.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

35. When rescission may be adjudged.

36. Rescission for mistake.

SECTIONS.

37. Alternative prayer for rescission in suit for specific performance.
38. Court may require party rescinding to do equity.
-

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. When cancellation may be ordered.
40. What instruments may be partially cancelled.
41. Power to require party for whom instrument is cancelled to make compensation.
-

CHAPTER VI.

OF DECLARATORY DECREES.

42. Discretion of Court as to declarations of status or right. Bar to such declaration.
43. Effect of declaration.
-

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

44. Appointment of Receivers discretionary.
Reference to Code of Civil Procedure.
-

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Power to order public servants and others to do certain specific acts.
Exemptions from such power.
46. Application how made.
Proceduro thereon.
Order in alternative.
47. Peremptory order.

SECTIONS.

- 48. Execution of, and appeal from, orders.
- 49. Costs.
- 50. Bar to issue of *mandamus*.
- 51. Power to frame rules.

PART III.

OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

- 52. Preventive relief how granted.
- 53. Temporary injunctions.
Perpetual injunctions.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

- 54. Perpetual injunctions when granted.
- 55. Mandatory injunctions.
- 56. Injunction when refused.
- 57. Injunction to perform negative agreement.

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed.

ACT No. I of 1877.¹

[7th February 1877.]

An Act to define and amend the law relating to certain kinds of Specific Relief.

WHEREAS it is expedient to define and amend the law relating to Preamble certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the Specific Relief Act, 1877.

Short title.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1875, Pt. V, p. 258; for the Report of the Select Committee, see *ibid*, 1876, Pt. V, p. 1445; for discussions in Council, see *ibid*, 1875, Supplement, pp. 981 and 1025, *ibid*, 1876, Supplement, p. 1284, and *ibid*, 1877, Supplement, p. 177.

This Act has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1893 (13 of 1893), s. 4 (1) and Sch. I, see Bur. Code.

It has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874), to the following Scheduled Districts, namely—

the Scheduled Districts of the Punjab	Ditto,	See Gazette of India, 1877, Pt. I, p. 562
the Districts of Kāmrup, Naugong, Darrang, Sibságar, Lakhimpur, Goalpara (excluding the Eastern Dvārā, Sylhet and Cachar (excluding the North Cachar Hills)	Ditto,	1877, Pt. I, p. 662.
the Districts of Hazáribágh, Lohárdaga [including the present District of Pálamau, separated in 1894] and Mámbhum, and Pargana Dhulbhum in the District of Singbhum [Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44]	Ditto,	1878, Pt. II, p. 82
the Darjeeling District	Ditto,	1919, Pt. I, p. 152 and Calcutta Gazette, 1909, Pt. I, p. 93
the Scheduled Districts of the Central Provinces	Ditto,	1879, Pt. I, p. 772.
Sind	Ditto,	1880, Pt. I, p. 676
Coorg	Ditto,	1882, Pt. I, p. 217.
Western Jalpaiguri	Ditto,	1882, Pt. I, p. 511.
That portion of the Jalpaiguri District known as the Western Dvārā	Ditto,	1896, Pt. I, p. 44
Kumaon and Garhwal and the Taráí Parganas (except s. 9)	Ditto,	1895, Pt. I, p. 373
Ajmere and Merwára	Ditto,	1897, Pt. II, p. 1415

S. 9 has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874), to the Taluks of Bhadrácalam and Rakapalli and the Rampá Country, see Gazette of India, 1879, Pt. I, p. 630, to tracts in the Godavari Agency to which it had not been extended, see *ibid*, 1900, Pt. I, p. 59, also Fort St. George Gazette, 1900, Pt. I, p. 169, and to Kumaon, Garhwal, the Taráí Parganas, the scheduled portion of the Mirzápur District, and Jaunsar Bawar, see Gazette of India, 1886, Pt. I, p. 452.

S. 9 has been declared in force in British Baluchistan by the Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code

The Act has been declared in force in the Pargana of Manpur by the Manpur Laws Regulation, 1926 (2 of 1926), s. 2

Local extent

It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV of 1874.

Commence-
ment

And it shall come into force on the first day of May 1877.

2. [*Repeal of enactments.*] Rep. by the *Repealing and Amending Act, 1891 (XII of 1891)*.

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

“obligation” includes every duty enforceable by law:

“trust” includes every species of express, implied or constructive fiduciary ownership:

“trustee” includes every person holding, expressly, by implication or constructively, a fiduciary character.

Illustrations.

(a) Z bequeaths land to A, “not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.” A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(b) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(c) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(d) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(e) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(f) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

“Settlement” means any instrument (other than a will or codicil as defined by the Indian Succession Act,¹) whereby the destination or devo- X of lution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of:

and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively IX of assigned to them by that Act.

Words
defined in
Contract Act.

¹ See now the Indian Succession Act, 1925 (39 of 1925).

(Part I.—Preliminary. Part II.—Of Specific Relief. Chapter I.—Of recovering Possession of Property.)

4. Except where it is herein otherwise expressly enacted, nothing in Savings- this Act shall be deemed—

- (a) to give any right to relief in respect of any agreement which is not a contract;
- (b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or
- (c) to affect the operation of the Indian Registration Act, on documents.

5. Specific relief is given—

- (a) by taking possession of certain property and delivering it to a claimant;
- (b) by ordering a party to do the very act which he is under an obligation to do;
- (c) by preventing a party from doing that which he is under an obligation not to do;
- (d) by determining and declaring the rights of parties otherwise than by an award of compensation; or
- (e) by appointing a receiver.

Specific relief
how given.

6. Specific relief granted under clause (c) of section 5 is called preventive relief.

Preventive
relief.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

Relief not
granted to
enforce penal
law.

PART II.

OF SPECIFIC-RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a) Possession of Immoveable Property.

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.¹

Recovery of
specific
immoveable
property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit * * * recover possession thereof, notwithstanding any other title that may be set up in such suit.

Suit by per-
son dispos-
sessed of
immoveable
property.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² But see as to tenancies in the Punjab, the Punjab Tenancy Act, 1887 (16 of 1887), s. 61, P. and N. W. Code.

³ The words "instituted within six months from the date of the dispossession" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

(Part II.—Of Specific Relief. Chapter I.—Of recovering Possession of Property.)

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b) Possession of Moveable Property.

Recovery of specific moveable property.

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.¹

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(a) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession whatever right he may have to secure their safe custody.

(c) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

IX of

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

- (a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;
- (b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Part II—Of Specific Relief Chapter I—Of recovering Possession of Property Chapter II—Of the Specific Performance of Contracts)

- (d) when the possession of the thing claimed has been wrongfully transferred from the claimant

Illustrations—

of clause (a)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B without A's authority pledges the furniture to C, and C knowing that B had no right to pledge the furniture advertises it for sale. C may be compelled to deliver the furniture to A for he holds it as A's trustee.

of clause (b)—

Z has got possession of an idol belonging to A's family and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (c)—

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II

OF THE SPECIFIC PERFORMANCE OF CONTRACTS

(a) Contracts which may be specifically enforced

12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced—

- (a) when the act agreed to be done is in the performance, wholly or partly, of a trust,
- (b) when there exists no standard for ascertaining the actual damage caused by non performance of the act agreed to be done,
- (c) when the act agreed to be done is such that pecuniary compensation for its non performance would not afford adequate relief, or
- (d) when it is probable that pecuniary compensation cannot be got for the non performance of the act agreed to be done

Explanation—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations—

of clause (a)—

¹ A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

¹ This Illustration is repealed wherever the Indian Trusts Act, 1882 (2 of 1882), is in force—see ss 1 and 2 of Act 2 of 1882.

Specific Relief.
Chapter II.—Of the Specific Performance
of Contracts.)
 (Part II.—Of Specific Relief.

of clause (b)—
 A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (c)—

A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (d)—

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because IX of 1/ a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Contract of which the subject has partially ceased to exist.

Illustrations.

(a) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Specific performance of part of contract where part unperformed is small.

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

Illustrations

(a) A contracts to sell B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger, who refuses to part with them. The two bighás are not necessary for the use or enjoyment of the 98 bighás, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighás and to make compensation to him for not conveying the two remaining bighás, or B may be directed at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase money less a sum awarded as compensation for the deficiency.

(b) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations

(a) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

Purchaser's
rights
against vend.
or with im-
perfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights:—

- (a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
- (b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;
- (c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee;
- (d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to
award com-
pensation in
certain cases.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations—

of the second paragraph—

A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

A has made a valid contract and has broken it without excuse, to the injury of B but that specific performance is not the proper remedy It shall award to B such compensation as it deems just

of the third paragraph—

A contracts with B to sell him a house for Rs 1000 the price to be paid and the possession given on the 1st January 1877 A fails to perform his part of the contract and B brings his suit for specific performance and compensation which is decided in his favour on the 1st January 1878 The decree may, besides ordering specific performance award to B compensation for any loss which he has sustained by A's refusal

of the Explanation—

A, a purchaser sues B, his vendor, for specific performance of a contract for the sale of a patent Before the hearing of the suit the patent expires The Court may award A compensation for the non performance of the contract, and may if necessary, amend the plaint for that purpose

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non performance of the resolution All the shares had been allotted before the institution of the suit The Court may, under this section award A compensation for the non performance

20 A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same

Liquidation of damages not a bar to specific performance.

Illustration

A contracts to grant B an under lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under lease, and that if the license is not procured A will pay B Rs 10000 A refuses to apply for the license and offers to pay B the Rs 10000 B is nevertheless entitled to have the contract specifically enforced if C consents to give the license

(b) *Contracts which cannot be specifically enforced*

21 The following contracts cannot be specifically enforced —

Contracts not specifically enforceable.

(a) a contract for the non-performance of which compensation in money is an adequate relief

(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature, is such, that the Court cannot enforce specific performance of its material terms

(c) a contract the terms of which the Court cannot find with reasonable certainty,

(d) a contract which is in its nature revocable,

(e) a contract made by trustees either in excess of their powers or in breach of their trust,

(f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company which is in excess of its powers,

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure,¹ ²[and the Indian Arbitration Act, 1899,] no contract to refer ³[present or future differences] to arbitration shall be specifically enforced; ⁴but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations—

to (a)—

A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India:

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest:

In consideration of certain property having been transferred by A to B; B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount:

The above contracts cannot be specifically enforced, for in the first and second both A and B, and in the third A, would be reimbursed by compensation in money.

to (b)—

A contracts to render personal service to B:

A contracts to employ B on personal service:

A, an author, contracts with B, a publisher, to complete a literary work:

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed:

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London:

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease:

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery:

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B:

A contracts with B to execute certain works which the Court cannot superintend:

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² These words were inserted by the Indian Arbitration Act, 1899 (9 of 1899), s. 21.

³ These words were substituted for the words "a controversy" by s. 21, *ibid.*

⁴ The last thirty-seven words of s. 21 do not apply to any submission or arbitration to which the provisions of the Indian Arbitration Act, 1899, for the time being apply (see Act 9 of 1899, s. 3), or to any agreement to refer to arbitration, or to any award to which Sch. II of Act 5 of 1908 applies (see para. 22 of the 2nd Schedule to Act 5 of 1908).

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

A contracts to supply B with all the goods of a certain class which B may require from B a lease of a certain house for a specified term, drawing room is handsomely decorated," even if it is that compensation can be recovered for its breach

A contracts to marry B

The above contracts cannot be specifically enforced

to (c)—

A, contracts with B to furnish him with a house in which the case is one of specific performance, the amount and nature of the being undefined

to (d)—

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership

to (e)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders

They contract to sell it without any such sanction. This contract cannot be specifically enforced

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property—and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase money. This contract cannot be specifically enforced

to (f)—

A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced

to (g)—

A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B

to (h)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed

(c) Of the Discretion of the Court

22 The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the Court is not arbitrary but ^{as to decreeing specific performance}

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(e) A is entitled to some land under his father's will on condition that if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.

(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

(i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d) For whom Contracts may be specifically enforced.

23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

Who may
obtain
specific
performance.

(a) any party thereto;

(b) the representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(c) where the contract is a settlement on marriage or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

- (g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(e) *For whom Contracts cannot be specifically enforced.*

Personal bars
to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

- (a) who could not recover compensation for its breach;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;
- (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or
- (d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations—

to clause (a)—

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting not as agent for B but on his own account. A cannot enforce specific performance of this contract.

to clause (b)—

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the contract specifically though A and B may sue each other for compensation for breach of it.

to clause (c)—

A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

25 A contract for the sale or letting of property, whether moveable or immovable, cannot be specifically enforced in favour of a vendor or lessor—

Contracts to sell property by one who has no title or who is a voluntary settler

- (a) who, knowing himself not to have any title to the property, has contracted to sell or let the same,
- (b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt,
- (c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject matter of the contract

Illustrations

(a) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b) A bequeaths his land to trustees declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract as in the absence of B's consent to the particular sale to C, the title which they can give C is as the law stands, not free from reasonable doubt.

(c) A, being in possession of certain land, contracts to sell it to Z. On inquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement and thus prejudice the interests of the persons claiming under it.

(f) *For whom Contracts cannot be specifically enforced, except with a Variation*

26 Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) —

Non-enforcement except with variation

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it,
- (b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff,

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

- (c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil;
- (d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;
- (e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(a) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d) A and B enter into negotiations for the purpose of securing land for B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral-contract.

(g) *Against whom Contracts may be specifically enforced.*

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts)

- (d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation,
- (e) when the promoters of a public company have, before its incorporation, entered into a contract, the company provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation

Illustrations—

to clause (b)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no inquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts to sell certain land to B. A dies intestate, and bequeaths certain of his lands to C. B may compel C to convey the land to him, and C takes out administration of the estate against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (c)—

A, the tenant for life of an estate with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

(h) Against whom Contracts cannot be specifically enforced.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases—

What parties cannot be compelled to perform.

- (a) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

- (b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Chapter III.—Of the Rectification of Instruments.)

practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

- (c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations—

to clause (c)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i) *The effect of dismissing a Suit for Specific Performance.*

Bar of suit
for breach
after dis-
missal.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(j) *Awards and Directions to execute Settlements.*

Application
of preceding
sections to
awards and
testamentary
directions to
execute
settlements.

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III:

OF THE RECTIFICATION OF INSTRUMENTS.

When instru-
ment may be
rectified.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express

(Part II—Of Specific Relief Chapter III—Of the Rectification of Instruments Chapter IV—Of the Rescission of Contracts)

that intention, so far as this can be done without prejudice to rights acquired by third person in good faith and for value

Illustrations

(a) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C, but it cannot be rectified so as to affect D's lease.

(b) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C his executors, administrators and assigns, during A's life, an annuity of Rs 5000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement. Presumption as to intent of parties.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be. Principles of rectification.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced. Specific enforcement of rectified contract.

Illustration

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV

OF THE RESCISSION OF CONTRACTS

35. Any person interested in a contract in writing¹ may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely:— When rescission may be adjudged.

(a) where the contract is voidable or terminable by the plaintiff,

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff,

¹ The words "in writing" were repealed wherever the Transfer of Property Act, 1882 (4 of 1882), is in force, see ss 1 and 2 of Act 4 of 1892.

(Part II.—Of Specific Relief. Chapter IV.—Of the Rescission of Contracts: Chapter V.—Of the Cancellation of Instruments.)

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations—

to (a)—

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (b)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

Rescission
for mistake.

36. Rescission of a contract in writing¹ cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative
prayer for
rescission in
suit for
specific per-
formance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

It may
be a party
to
do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

When cancel-
lation may be
ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

¹ See foot-note 1 on p. 99.

(Part II.—Of Specific Relief Chapter V.—Of the Cancellation of Instruments Chapter VI.—Of Declaratory Decrees.)

If the instrument has been registered under the Indian Registration Act,¹ the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations

(a) A, the owner of a ship by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her B may obtain the cancellation of the policy.

(b) A conveys land to B in trust for himself and C. B obtains possession of the land and p... made to B in trust for hi...

(c) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act.¹ B may obtain the cancellation of this lease.

(d) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

What instru-
ments may
be partially
cancelled.

Illustration

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Power to re-
quire party
for whom in-
strument is
cancelled to
make compen-
sation.

CHAPTER VI.]

OF DECLARATORY DECREES.

42. Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

Discretion
of Court as to
declaration
of status or
right.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Bar to such
declaration.

¹ See...
As to...
45, P. and N. W. Code.

Act, 1857 (17 of 1857), s.

(Part II.—Of Specific Relief. Chapter IV.—Of the Rescission of Contracts. Chapter V.—Of the Cancellation of Instruments.)

- (c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations—

to (a)—

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (b)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

Rescission
for mistake.

36. Rescission of a contract in writing¹ cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative
prayer for
rescission in
suit for
specific per-
formance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

may
party
ascending to
do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

When cancel-
lation may be
ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

¹ See foot-note 1 on p. 99.

(Part II—Of Specific Relief Chapter VII—Of the Appointment of
Receivers Chapter VIII—Of the Enforcement of Public Duties)

The mode and effect of his appointment, and his rights, powers, duties and liabilities are regulated by the Code of Civil Procedure ¹

Reference to
Code of Civil-
Procedure

CHAPTER VIII

OF THE ENFORCEMENT OF PUBLIC DUTIES

45 Any of the High Courts of Judicature at Fort William, Madras, ²[Bombay and Rangoon] may make an order requiring any specific act to be done or forbore, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office whether of a permanent or a temporary nature or by any corporation or inferior Court of Judicature

Power to
order public
servants and
others to do
certain speci-
fic acts

Provided—

- (a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act,
- (b) that such doing or forbearing is under any law for the time being in force clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character
- (c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice,
- (d) that the applicant has no other specific and adequate legal remedy, and
- (e) that the remedy given by the order applied for will be complete

Nothing in this section shall be deemed to authorize any High Court—

Exemptions
from such
power

- (f) to make any order binding on the Secretary of State for India in Council on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay

¹ See now the Code of Civil Procedure 1908 (Act 5 of 1908)

² These words were substituted for the words "and Bombay" by the "and Amending Act, 1923 (11 of 1923)

(Part II.—Of Specific Relief. Chapter VIII.—Of the Enforcement of Public Duties.)

in Council, ¹ or on ²[the Governor in Council of Fort William in Bengal] [or on the Governor of Burma in Council;]³

(g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

Application how made.

Procedure thereon.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

Order in alternative.

If, in the last case, the person, Court or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

Peremptory order.

47. If the person, Court or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

Execution of, and appeal from, orders.

48. Every order under this Chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Costs.

49. The costs of all applications and orders under this Chapter shall be in the discretion of the High Court.

Bar to issue of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

Power to frame rules.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules⁴ to regulate the procedure under this Chapter; and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this Chapter.

¹ The word "or" was omitted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

² These words were substituted for the words "the Lieutenant Governor of Bengal" by s. 7 and Sch. E of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912).

³ These words were added by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

⁴ For rules made by the High Court of Bombay at Bombay under this section, see Bom. R. and O.

PART III.

OF PREVENTIVE RELIEF

CHAPTER IX

OF INJUNCTIONS GENERALLY

52 Preventive relief is granted at the discretion of the Court by an injunction temporary or perpetual Preventive relief how granted

53 Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure ¹ Temporary injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act which would be contrary to the rights of the plaintiff Perpetual injunctions.

CHAPTER X

OF PERPETUAL INJUNCTIONS

54 Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication Perpetual injunctions when granted

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely) —

- (a) where the defendant is trustee of the property for the plaintiff,
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion,
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief,
- (d) where it is probable that pecuniary compensation cannot be got for the invasion,
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings

¹ See now the Code of Civil Procedure, 1903 (Act 5 of 1908)

(Part III.—Of Preventive Relief. Chapter X.—Of Perpetual Injunctions.)

Explanation.—For the purpose of this section a trademark is property.

Illustrations.

(a) A lets certain lands to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c) The directors of a public company are about to pay a dividend out of capital¹ or borrowed money. Any of the shareholders may sue for an injunction to restrain them².

(d) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

¹ As to payment of interest out of capital by Railway Companies during construction, see the Indian Railway Companies Act, 1895 (10 of 1895).

² But see s. 3 of the Indian Railway Companies Act, 1895 (10 of 1895), under which a Railway is permitted to pay interest on its paid-up share capital out of capital upon certain conditions and restrictions.

(Part III—Of Preventive Relief Chapter X—Of Perpetual Injunctions)

... a right of way over A's land. In a suit land is subject to no obstructing his alleged train them

(g) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening in case of refusal to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55 When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. Mandatory injunctions.

Illustrations

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act,¹ Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c) In the case put as illustration (i) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed.

1860. (e) A threatens to publish a libelous and scandalous statement concerning B, which would be punishable under Chapter XXI of the Indian Penal Code, if published. B may obtain an injunction to restrain A from publishing the statement, if B shows that it would be injurious to him. If B which would be punishable be Court may grant an injunction to restrain A from publishing the statement, if B shows that it would be injurious to him.

¹ As to the working of mines under land, the surface of which has been acquired by Government, see the Land Acquisition (Mines) Act, 1885 (18 of 1885).

² See now Act 9 of 1908.

(Part III.—Of Preventive Relief. Chapter X.—Of Perpetual Injunctions.)

(f) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g) In the cases put as illustrations (v) and (w) to section 51 and in illustrations (e) and (f) to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction
when
refused.

56. An injunction cannot be granted—

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;
- (c) to restrain persons from applying to any legislative body;
- (d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government;
- (e) to stay proceedings in any criminal matter;
- (f) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (h) to prevent a continuing breach in which the applicant has acquiesced;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;
- (k) where the applicant has no personal interest in the matter.

Illustrations.

(a) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles, designating them as "patent plumbago-crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction
to perform
negative
agreement.

57. Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circum-

(Part III —Of Preventive Relief Chapter A —Of Perpetual Injunctions)

1877 Act IV]

Presidency Magistrates

stance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement provided that the applicant has not failed to perform the contract so far as it is binding on him

Illustrations

(a) A contracts to sell to B for Rs 1 000 the good will of a certain business unconnected with business premises, and further agrees not to carry on that business in Calcutta B pays A the Rs 1 000 but A carries on the business in Calcutta The Court cannot compel A to send his customers to B but B may obtain an injunction restraining A from carrying on the business in Calcutta

(b) A contracts to sell to B the good will of a business A then sets up a similar business close by B's shop and solicits his old customers to deal with him This is contrary to his implied contract and B may obtain an injunction to restrain A from soliciting the customers and from doing any act whereby their good will may be withdrawn from B

(c) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment

(d) B contracts with A that he will serve him faithfully for twelve months as a clerk A is not entitled to a decree for specific performance of this contract But he is entitled to an injunction restraining B from serving a rival house as clerk

(e) A contracts with B that in consideration of Rs 1 000 to be paid to him by B on a day fixed he will not set up a certain business within a specified distance B fails to pay the money A cannot be restrained from carrying on the business within the specified distance

SCHEDULE

[ENACTMENTS REVOKED]

[*Rep by the Repealing and Amending Act 1891 (XII of 1891)*]

ACT No IV of 1877¹

[28th February 1877]

An Act to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency-towns

WHEREAS it is expedient to consolidate and amend the law regulating the procedure of the Courts of Magistrates in the Presidency-towns and to increase the jurisdiction of such Courts, It is hereby enacted as follows —

1 to 56 [*Rep by the Code of Criminal Procedure, 1882 (Act X of 1882)*]

57. A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate except in the case of a summons to

Preamble.

Fees for summonses and warrants.

¹ Short title, "The Presidency Magistrates (Court-fees) Act 1877" See the Indian Short Titles Act 1897 (11 of 1897)

² For the Statement of Objects and Reasons see Gazette of India, 1874 Pt V, p 83, for the Report of the Select Committee, see *ibid* 1875, Pt V p 30, and *ibid*, 1876 Pt V, p 37, for the discussions in Council, see *ibid*, 1874, Supplement, p 418 *ibid*, 1876, Supplement pp 193 and 709, *ibid*, 1877, Supplement, p 497

attend and give evidence or to produce documents, in which case they shall be paid a fee of four annas:

Power to
remit fees.

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty.

58 to end. [*Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*]

THE OPIUM ACT, 1878.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. [*Repealed.*]
3. Interpretation-clause.
4. Prohibition of poppy cultivation and possession, etc., of opium.
5. Power to make rules to permit such matters.
6. Duty on opium imported by land.
7. Warehousing opium.
8. Power to make rules relating to warehouses.
9. Penalty for illegal cultivation of poppy, etc.
10. Presumption in prosecutions under section 9.
11. Confiscation of opium.
12. Order of confiscation by whom to be made.
13. Power to make rules regarding disposal of things confiscated, and rewards.
14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.
15. Power to seize opium in open places.
Power to detain, search and arrest.
16. Searches how made.
17. Officers to assist each other.
18. Vexatious entries, searches, seizures and arrests.
19. Issue of warrants.
20. Disposal of person arrested or thing seized.
21. Report of arrests and seizures.
22. Procedure in case of illegal poppy cultivation.

- 23 Recovery of arrears of fees, duties, etc
 24 Farmer may apply to Collector or other officer to recover amount due to him by licensee
 25 Recovery of penalties due under bond

SCHEDULE [Repealed]

ACT No I of 1878¹

[9th January 1878]

An Act to amend the law relating to Opium

WHEREAS it is expedient to amend the law relating to opium, It is hereby enacted as follows —

1. This Act may be called the Opium Act, 1878

It shall extend to such local areas² as the Governor General in Council may, by notification in the Gazette of India, from time to time direct,

Short title
Local extent

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf

Commencement

2 [Repeal and amendment of enactments] *Rep by the Repealing and Amending Act, 1891 (XII of 1891), and the Repealing and Amending Act, 1894 (IV of 1894)*

¹ For the Statement of Objects and Reasons see Gazette of India, 1877, Pt V, p 645, for Proceedings in Council, see *ibid*, Supplement, pp 3015 and 3030, *ibid* 1878 pp 53 and 80

The Act has been declared in force in the Sonthal Pore by the Sonthal Pore, in British Baluchistan, s 3, Bal Code, and s 3 of 1913, s 3, B

& O Code

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1893 (13 of 1893), s 4 (1), Sch I, Bur Code

It has been declared in force in Arakan Hill District by s 2 of Reg 1 of 1916, see Burma Code

For Opium directions under the Act and rules thereunder by the Financial Commissioner, Burma, in supersession of existing orders, see Burma Gazette, 1904, Pt IV, p 352

² It has been extended by notification in the Gazette of India to the following local areas from the date specified against each —

- (1) Ajmer-Merwara, from 2nd August, 1879, see *ibid*, p 466, see also A. R. and O.
- (2) Assam from 1st April, 1879, see *ibid*, p 259.
- (3) Bengal, from 21st August, 1878, see *ibid*, p 626.
- (4) Bombay Presidency, from 1st April, 1878, see *ibid*, p 231.
- (5) Central Provinces, from 28th June, 1879, see *ibid*, p 441.
- (6) Coorg, from 1st April, 1882, see *ibid* 1882, Pt I, p 135.
- (7) Lower Burma, from 29th March, 1879, see *ibid*, 1879, Pt I, p 75.
- (8) Madras Presidency, from 1st July, 1880, see *ibid*, p 513.
- (9) The Punjab, from 1st April, 1880, see *ibid*, 1880, Pt I, p 16, and
- (10) United Provinces of Agra and Oudh, from 2nd February, 1878, see Gazette of India, 1878, Pt I, p 65.

The Act has been extended under s 10 (1) of the Burma Laws Act, 1893 (13 of 1893), to the Mrelat, see Burma Gazette, 1927, Pt I, p 242, and the whole Act, with the exception of ss 6-8 and 22-25, has been extended to the Taunggyi Civil Station of the Southern Shan States and the Lashio Civil Station of the Northern Shan States respectively, with certain modifications, see Burma Gazette, 1900, Pt I, pp 478 and 709, respectively

Interpreta-
tion-clause.

¹3. In this Act, unless there be something repugnant in the subject or context,—

“ opium ” includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy :

“ Magistrate ”² means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered³ by the Local Government to try cases under this Act) a Magistrate of the second class :

“ import ” means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government :

“ export ” means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government :

“ transport ” means to remove from one place to another within the territories administered by the same Local Government.

Prohibition
of poppy-
cultivation
and posses-
sion, etc., of
opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

- (a) cultivate the poppy ;
- (b) manufacture opium ;
- (c) possess opium ;
- (d) transport opium ;
- (e) import or export opium ; or
- (f) sell opium.

Power to
make rules
to permit
such matters.

5. The Local Government, ⁴[subject to the control] of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules⁵ consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

- (a) the cultivation of the poppy ;
- (b) the manufacture of opium ;
- (c) the possession of opium ;
- (d) the transport of opium ;

¹ For definition of the term “ Officer-in-Charge of a police-station ” for the Presidency of Bombay, see Bom. Act 2 of 1923.

² Cf. definition in the last clause of s. 3 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

³ For notification empowering Magistrates of the second class to try cases under the Act, see Mad. R. and O.

⁴ These words were substituted for the words “ with the previous sanction ” by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

⁵ For rules under this section, see different local rules and orders.

- (e) the importation or exportation of opium, and
- (f) the sale of opium and the farm of duties leviable on the sale of opium by retail

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea customs¹ for the time being in force or under section 6

6 The Governor General in Council may, from time to time, by notification in the Gazette of India, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof and may alter or abolish any duty so imposed

Duty on opium imported by land

7. The Governor General in Council may, by order notified in the Gazette of India,—

Warehousing opium

- (a) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and
- (b) cancel any such order

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

- (c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, intended to be exported thence, and
- (d) cancel any such declaration

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers

Power to make rules relating to warehouses

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse

¹ See the Sea Customs Act, 1878 (8 of 1878) (Chapter VIII)
 For 1894, Pt I, p 454 (exempting poppy As)

Punjab and O. C. Notifications in the

As to rates at which opium shall be sold in the United Provinces at Government Treasuries, see North Western Provinces and Oudh Gazette, 1893, Pt I, p 495

In Ajmer Merwara in respect of Malwa opium not being poppy heads, see *ibid*, 1901, Pt I, p 235, and imposing duty on opium imported into the Punjab and Ajmer, see A. R. and O.

² For notification authorizing the Government of Bombay to establish a warehouse under this section, see Bom R. and O.

Power to] make rules relating to warehouses.

8. The Local Government, ¹[subject to the control] of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules² consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of § poppy, etc.

9.³ Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

- (a) cultivates the poppy, or
- (b) manufactures opium, or
- (c) possesses opium, or
- (d) transports opium, or
- (e) imports or exports opium, or
- (f) sells opium, or
- (g) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption in prosecutions under section 9.

10. In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed,—

- (a) the poppy so cultivated,
- (b) the opium in respect of which any offence under the same section has been committed,
- (c) where in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing or

¹ These words were substituted for the words "with the previous sanction" by s. 2 and Sch. I of the Devolution Act, 1920 (33 of 1920).

² For rules issued under this section, see Bombay Opium Manual; Punjab Gazette, 1911, Pt. I, p. 496.

³ For amendments to s. 9 in the application of the Act to the Punjab, see Punjab Act 3 of 1925.

exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

- (d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person is charged with an offence in respect of any opium is acquitted but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Order of
confiscation
by whom to
be made.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Local Government may, * * * from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate —

Power to
make rules
regarding
disposal of
things con-
fiscated, and
rewards.

(a) the disposal of all things confiscated under this Act; and

(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may

Power to en-
ter, arrest
and seize, or

¹ The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (33 of 1920).

Power to
make rules
relating to
warehouses.

8. The Local Government, ¹[subject to the control] of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules² consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for
illegal culti-
vation of
poppy, etc.

9.³ Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

- (a) cultivates the poppy, or
- (b) manufactures opium, or
- (c) possesses opium, or
- (d) transports opium, or
- (e) imports or exports opium, or
- (f) sells opium, or
- (g) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

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Confiscation
of opium.

11. In any case in which an offence under section 9 has been committed,—

- (a) the poppy so cultivated,
- (b) the opium in respect of which any offence under the same section has been committed,
- (c) where in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing or

¹ These words were substituted for the words "with the previous sanction" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² For rules issued under this section, see Bombay Opium Manual; Punjab Gazette, 1911, Pt. I, p. 496.

³ For amendments to s. 9 in the application of the Act to the Punjab, see Punjab Act 3 of 1925.

exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

- (d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person is charged with an offence in respect of any opium is acquitted but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Order of
confiscation
by whom to
be made.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Local Government may, * * * from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate ~

Power to
make rules
regarding
disposal of
things con-
fiscated, and
rewards.

(a) the disposal of all things confiscated under this Act; and

(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may

Power to en-
ter, arrest
and seize, or

¹ The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (35 of 1920).

information that opium is unlawfully kept in any enclosed place.

in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

- (a) enter into any such building, vessel or place;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry;
- (c) seize such opium and all materials used in the manufacture thereof and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and
- (d) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

15. Any officer of any of the said departments may—

- (a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium;
- (b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to detain, search and arrest.

Searches how made.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.²

Officers to assist each other.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures and arrests.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

¹ For notification conferring powers on officials of the class referred to, see different local rules and orders.

² See now the Code of Criminal Procedure, 1893 (5 of 1893).

shall, for every such offence be punished with fine not exceeding five hundred rupees

19 The Collector of the district, Deputy Commissioner or other officer authorized¹ by the Local Government in this behalf either personally or in right of his office or a Magistrate may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium or for the search whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed

Issue of warrants.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure²

20 Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police station, and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued

Disposal of person arrested or thing seized.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch take such measures as may be necessary for the disposal according to law of such person or thing

21 Whenever any officer makes any arrest or seizure under this Act, he shall, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior

Report of arrests and seizures

22 In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized³ by the Local Government in this behalf, and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail

Procedure in case of illegal poppy cultivation.

Provided that, wherever 'Act No XIII of 1857 (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*) or any part thereof is in force, nothing in this section shall apply to such cultivation

¹ See foot-note to s. 14 *supra*

² See now the Code of Criminal Procedure 1893 (5 of 1893)

³ This section has been substituted by ss 20, 20A, 20B and 20C for the purpose of its application to the Presidency of Bombay by s. 3 of Bom Act 2 of 1923

⁴ U P Code C P Code, and Ben Code

Recovery
of arrears of
fees, duties,
etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

Farmer may
apply to
Collector or
other officer
to recover
amount due
to him by
licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized¹ by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, ²[Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of
penalties due
under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and, upon breach of the condition of such ^{IX}of bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed by Act XII of 1891.

¹ See foot-note to s. 14, *supra*.

² See the Revenue Recovery Act, 1890 (1 of 1890).

³ These words were substituted for the words "Deputy Collector" by the Repealing and Amending Act, 1891 (12 of 1891), Sch. II.

(Preliminary)

ACT No VI or 1878¹

[13th February 1878]

An Act to amend the law relating to Treasure-trove

WHEREAS it is expedient to amend the law relating to treasure-trove, Preamble
It is hereby enacted as follows —

Preliminary

1. This Act may be called the Indian Treasure-trove Act, 1878

Short title

It extends to the whole of British India

Extent

* * * * *

2. [Repeal of enactments] Rep by the Repealing and Amending
Act 1891 (VII of 1891)

3 In this Act—

Interpreta-

“treasure” means anything of any value hidden in the soil, or in anything affixed thereto “Treasure”

“Collector” means (1) any Revenue officer in independent charge of a district, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act²

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing. Owner

¹ For the Statement of Objects and Reasons, see Gazette of India, 1876, Pt V, p 1403, for discussions in Council, see *ibid*, Supplement, pp 1233 and 1326, *ibid*, 1878, pp 207 and 287

This Act has been declared in force in—

Angul and the Khondmahls by the Angul Laws Regulation, 1913 (3 of 1913),

the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872) s 3 as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899), s 3, B & O Code, Vol I,

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s 4 (1) and Sch I, Bur Code

Arakan Hill District, by s 2 of Regulation I of 1916, Burma Code

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913) s 3 See Baluchistan Code

It has also been declared by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following portions of the de-regulated Scheduled Districts of the Chutia Nagpur Division, namely —

the Districts of Hazaribagh, Lohardaga and Munblum, and Pargana Dhalbhum and the Kollán in the District of Singhbhum—see Gazette of India, 1881, Pt I, p 591 The District of Lohardaga included at this time the present District of Palawan which was separated in 1894, Lohardaga is now called the Ranchi District, Cal Gazette, 1899, Pt I, p 44

² The words “And it shall come into force at once” were repealed by the Repealing and Amending Act, 1914 (10 of 1914)

³ In Bombay, Magistrates have been appointed to perform the functions of Collectors under the Act see Bom R and O

*(Procedure on finding Treasure.)**Procedure on finding Treasure.*

Notice by
finder of
treasure.

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

- (a) of the nature and amount or approximate value of such treasure;
- (b) of the place in which it was found;
- (c) of the date of the finding;

and either deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require.

Notification
requiring
claimants to
appear.

5. On receiving a notice under section 4, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

- (a) he shall publish a notification in such manner as the Local Government from time to time prescribes in this behalf, to the effect that on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;
- (b) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

Forfeiture of
right on
failure to
appear.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Matters to be
enquired into
and deter-
mined by the
Collector.

7. On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

- (a) the person by whom, the place in which, and the circumstances under which, such treasure was found; and
- (b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

(Procedure on finding Treasure.)

8. If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

Time to be allowed for suit by person claiming the treasure.

9. If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden; or

When treasure may be declared ownerless.

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector; or

if such suit is instituted within such period and the plaintiff's claim is finally rejected;

the Collector may declare the treasure to be ownerless.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue-authority.

Appeal against such declaration.

Subject to such appeal, every such declaration shall be final and conclusive.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

Proceedings subsequent to declaration.

11. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

When no other person claims as owner of place treasure to be given to finder.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

When only one such person claims and his claim is not disputed, treasure to be divided.

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

(Procedure on finding Treasure.)

Provided that the Collector may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,—

- (a) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or
- (b) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed:

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

and shares
to be deliver-
ed to parties.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof to which they are respectively entitled under such division.

In case of
dispute as to
ownership of
place, pro-
ceedings to
be stayed.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Settlement of
such dispute,

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

and division
thereupon.

15. If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him and the finder.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

Power to ac-
quire the
treasure on

16. The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on

(Procedure on finding Treasure)

behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons, and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion

17 No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred

Decision of Collector final, and no suit to be against him for acts done *bonâ fide*.

18 A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure¹ on a Civil Court for the trial of suits

Collector to exercise powers of Civil Court

19 The Local Government may, from time to time, make rules² consistent with this Act to regulate proceedings hereunder

Power to make rules

Such rules shall, on being published in the local Gazette, have the force of law

Penalties

20 If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on finder failing to give notice etc

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both

21. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on owner abetting offence under section 20

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both

SCHEDULE

[*Rep by the Repealing and Amending Act, 1891 (XII of 1891)*]

¹ See now Act 5 of 1903

² For rules made under the powers conferred by this section, see different local rules and orders

THE SEA CUSTOMS ACT, 1878.

CONTENTS.

CHAPTER I.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Repeal of enactments.
References to enactments repealed.
Saving of appointments, etc.
3. Interpretation.
4. Agent of owner of goods to be deemed owner for certain purposes.
5. When ship's agent may act for master.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, ETC.

6. Appointment of Customs-officers.
7. Delegation of powers under section 6.
8. Performance of duties of Customs-collector, where no custom-house.
9. Power to make rules.
10. Customs-officers exempted from service on jury or inquest or as assessors.

CHAPTER III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES AND BOARDING AND LANDING-STATIONS.

11. Power to appoint ports, wharves and custom-houses.
12. Power to declare places to be ports for coasting-trade.
13. Power to declare that foreign ports shall be regarded as customs-ports for certain purposes.

SECTIONS.

14. Power to declare warehousing ports.
15. Power to appoint public warehouses.
16. Power to license private warehouses.
Form of application for license.
Revocation of license.
17. Stations for Customs-officers to board and land.

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

18. Prohibitions.
19. Power to prohibit or restrict importation or exportation of goods.
- 19A. Detention and confiscation of goods whose importation is prohibited.

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

20. Goods dutiable.
21. Goods partially composed of dutiable articles.
22. Power to fix tariff-values.
23. General power to exempt from customs-duties.
Power to authorize, in special cases, exemption from duty.
24. Baggage in actual use.
25. Re-imported articles of country-produce.
Proviso.
26. Excess-duty on importation of certain country goods.
27. Goods derelict and wreck.
28. Country provisions and stores may be shipped free of duty.
29. Owner to declare real value, etc., of goods in bill of entry or shipping bill.
Power to require production of invoice, etc.
30. "Real value" defined.
31. Examination of *ad valorem* goods.
32. Procedure where such goods are undervalued by owner.
33. Abatement allowed on damaged goods.
Reduced duty how determined.
34. Deterioration of tariff-value goods.
- 34-A. Abatement of duty on goods on which duty is levied on quantity.
35. No abatement when duty is levied on quantity.
36. Restriction on amendment of bill of entry or shipping bill.

SECTIONS.

37. Alteration of import-duty or tariff valuation.
 38. Alteration of export-duty or tariff valuation.
 39. Payment of duties short levied or erroneously refunded.
 40. No refund of charges erroneously levied or paid, unless claimed within three months.
 41. Power to give credit for, and keep account current of, duties and charges.
-

CHAPTER VI.

DRAWBACK.

42. Drawback allowable on re-export.
Conditions for grant of drawback.
 43. Drawback on goods exported to customs-port and thence to foreign port.
Proviso.
 44. Drawback of duties on wine and spirit allowed for officers of Navy.
 45. Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.
 46. Transfer of wine or spirit from one Naval officer to another.
 47. Provisions and stores for Her Majesty's Navy.
 48. Indian Marine and Marine survey.
 49. (a) Power to declare what goods are identifiable,
(b) and to prohibit drawback in case of specified foreign port.
 50. When no drawback allowed.
 51. Time to claim drawback.
When payment made.
 52. Declaration by parties claiming drawback.
-

CHAPTER VII.

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessels inwards.

53. Power to fix places beyond which inward-bound vessels are not to proceed until manifest delivered.
Delivery of manifest when vessel anchors below place so fixed.
54. Delivery of manifest where no place has been so fixed.

SECTIONS.

55. Signature and contents of manifest.

Amendment of errors in manifest.

56. Duty of person receiving manifest. •

57. Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards.

58. Master, if required, to deliver bill of lading, etc., to Customs-collector, and answer questions

59. Special pass for breaking bulk.

60 Manifest, etc., may be delivered by ship's agent

Entry outwards, Port-clearance and Departure of Vessels.

61. Order for entry outwards to be obtained before export cargo is shipped

62 No vessel to depart without port-clearance

No pilot to take charge of vessel proceeding to sea without production of port-clearance

63 Application for port-clearance

Master on applying for port-clearance to deliver documents and answer questions

64 Power to refuse port-clearance

65. Grant of port-clearance

66. Grant of port-clearance on security of ship's agent

CHAPTER VIII

GENERAL PROVISIONS AFFECTING VESSELS IN PORT

67. Power to depute Customs-officer to board ships.

Duty of such officer.

68. Officer and servant to be received

Accommodation of officer and servant

69. Officers of Customs to have free access to every part of ship, and may seal and secure goods.

Power to authorize search and opening of locks.

70 Goods not to be shipped, discharged or water-borne except in presence of officer.

SECTIONS.

- 71. Period allowed for discharge and shipment of cargo.
Consequence of exceeding same.
Allowance for period during which vessel is laid up.
- 72. Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.
- 73. Goods not to be shipped, etc., except at wharves.
- 74. Power to exempt from sections 70 and 73.
- 75. Power to make rules regarding baggage and mails.
Landing-fees.
- 76. Boat-note.
- 77. Goods water-borne to be forthwith landed or shipped.
- 78. Such goods not to be transhipped without permission.
- 79. Power to prohibit plying of unlicensed cargo-boats.
Issue of licenses and registration of cargo-boats.
- 80. Power to require goods to be weighed or measured on board before landing or after shipment.

 CHAPTER IX.

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS.

- 81. Discharge of cargo may commence on receipt of due permission.
- 82. Goods not to leave ship unless entered in manifest.
- 83. Procedure in respect of goods not landed within time allowed.
- 84. Power to land small parcels.
Notice regarding unclaimed packages.
- 85. Power to permit immediate discharge.
- 86. Entry for home consumption or warehousing.
- 87. Assessment of dutiable goods.
- 88. Procedure in case of goods not cleared or warehoused within four months after entry of vessel.
Power to direct sale of perishable goods.
Proviso.

 CHAPTER X.

OF CLEARANCE OF GOODS FOR HOME CONSUMPTION.

- 89. Clearance for home consumption.

CHAPTER XI.

WAREHOUSING.

Of the Admission of Goods into a Warehouse.

SECTIONS.

90. Application to warehouse.
91. Form of application.
92. Warehousing bond.
Form of bond.
93. Forwarding of goods to warehouse.
94. Receipt of goods at warehouse.
95. Goods how warehoused.
96. Warrant to be given when goods are warehoused.
Form of warrant.

Rules relating to Goods in a Warehouse.

97. Access of Customs-officer to private warehouse.
98. Power to cause packages lodged in warehouse to be opened and examined.
99. Access of owners to warehoused goods.
100. Owner's power to deal with warehoused goods.
101. Payment of rent and warehouse-dues.
102. Goods not to be taken out of warehouse, except as provided by this Act.
103. Period for which goods may remain warehoused under bond.
Goods in private warehouse on cancellation of license.

Of the Removal of Goods from one Warehouse to another.

104. Power to remove goods from one warehouse to another in same port.
105. Power to remove goods from one port to another.
Procedure.
106. Transmission of account of goods to officers at port of destination.
Bond for due arrival and re-warehousing.
107. Remover may enter into a general bond.
108. Goods on arrival at port of destination to be subject to same laws as goods on first importation.
109. Bond under section 92 to continue in force notwithstanding removal.

Clearance for Home Consumption or Shipment.

SECTIONS.

- 110. Clearance of bonded goods for home consumption.
- 111. Clearance of same for shipment to foreign port.
- 112. Clearance of same for shipment as provisions, etc., on vessel proceeding to foreign ports.
- 113. Form of application for clearance of goods.
Application when to be made.
- 114. Re-assessment of warehoused goods when damaged.
- 115. Re-assessment on alteration of duty or tariff-valuation.
- 116. Allowance in case of wine, spirit, beer or salt.
- 117. Further special allowance.

Of the Forfeiture and Discharge of the Bond.

- 118. If goods are improperly removed from warehouses or allowed to remain beyond time fixed,
or lost or destroyed,
or taken as samples,
Collector may demand duty, etc.
- 119. Procedure on failure to pay duty, etc.
- 120. Noting removal of goods.
- 121. Register of bonds.
Cancellation and return of bonds.

Miscellaneous.

- 122. Power to remit duties on warehoused goods lost or destroyed.
- 123. Responsibility of warehouse-keeper.
Compensation for loss or injury.
- 124. Public warehouse to be locked.
- 125. Power to decide where goods may be deposited in public warehouse, and on what terms.
- 126. Expenses of carriage, packing, etc., to be borne by owners.
- 127. Bengal Bonded Warehouse Association.

CHAPTER XII.

TRANSHIPMENT.

- 128. Power to permit transshipment without payment of duty.
- 129. Superintendence of transshipment.

SECTIONS.

- 130. Subsidiary rules as to transhipment.
 - 131. Entry and warehousing, on arrival, of goods transhipped under section 128, clause 2.
 - 132. Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.
 - 133. Levy of transhipment-fee.
 - 134. Power to prohibit transhipment.
 - 135. No goods to be transhipped except as provided.
-

CHAPTER XIII.

EXPORTATION OR SHIPMENT AND RE-LANDING.

- 136. No goods to be shipped, etc., till entry outwards of vessel.
 - 137. Clearance for shipment.
 - 138. Bond required in certain cases before exportation.
 - 139. Additional charge on goods cleared for shipment after port-clearance granted.
 - 140. Notice of non-shipment or re-landing, and return of duty thereon.
 - 141. Goods re-landed or transhipped from a vessel returning to port, or putting into another port.
 - 142. Vessel returning to port may enter and land goods under import-rules.
 - 143. Landing of cargo during repairs.
-

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

- 144. Rules for removal of spirit from distillery without payment of duty for exportation.
- 145. Spirit for export to be taken direct from distillery to Custom-house under pass.
- 146. Gauging and proving of spirit.

SECTIONS.

- 147. Duty to be recovered on any deficiency in spirit under bond.
- 148. Duty on spirit exported under bond from one Indian port to another.
- 149. Removal for local consumption of spirit intended for exportation.

Drawback of Excise-duty on Export of Spirit.

- 150. Drawback of excise-duty on spirit exported.

Miscellaneous.

- 151. Differential duty, to be levied in certain cases.
- 152. Rum-shrub, etc., how charged with duty.
Provisions respecting spirit applied to such liquors.
- 153. Conditions of drawback and remission of duty on spirit.
- 154. Re-land of spirit shipped.
- 155. Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.
Decision where no rules, or their applicability disputed.

CHAPTER XV.

COASTING-TRADE.

- 156. Chapters VII, IX, X and part of XIII inapplicable to coasting-trade.
- 157. Power to regulate coasting-trade.
- 158. Coasting-vessels to deliver manifest and obtain port-clearance before leaving port of lading.
- 159. Delivery of manifest, etc., on arrival.
- 160. Departure from intermediate port.
- 161. Power to require bond before port-clearance is granted.
- 162. Discharge of cargo.
- 163. Goods on coasting-vessels, if excisable, not to be unladen without permission.
- 164. Grant and revocation of general pass.
- 165. Rules respecting cargo-books to be kept by masters of coasting-vessels.
- 166. Power to board and examine coasting-vessels.

CHAPTER XVI.

OFFENCES AND PENALTIES.

SECTIONS.

167. Punishments for offences:—

1. For infringing rules made under Act.
2. For landing or shipping goods at unauthorized port, etc.
3. For shipping, landing, concealing, etc., contrary to Act.
For being on board vessel on which offence is committed under No. 4.
4. For vessel which has been in port with a cargo afterwards being found in ballast and cargo unaccounted for.
5. For masters of tug-steamers or pilot-vessels receiving or discharging any goods without due authority from sea-going vessel.
6. For not bringing-to at boarding-station.
7. For vessel removing from place of mooring or unlading, without due authority.
For vessel not being moored in accordance with directions under section 17.
8. For goods being imported or exported contrary to prohibition.
9. For unauthorised declaration as to value of goods.
10. For not exporting or re-landing drawback goods.
11. For unauthorised lading or unlading of wine, spirit, etc.
12. For entering goods for drawback, which are less in value than the amount of drawback claimed.
13. For proceeding inward beyond fixed place before delivery of manifest.
14. For wilfully omitting to deliver manifest when vessel anchors below reporting station.
15. For like omission when reporting station has not been fixed.
16. For master delivering unsigned or untrue manifest.
17. For not being able to account for missing goods or deficiency of goods.
18. For refusing to receive or countersign manifest.

SECTIONS.

167. Punishments for offences—*continued*.

19. For breaking bulk without permission.
20. For false entry or fraudulent alteration in bill of lading.
For not making bill before leaving place where goods shipped.
For cargo being stored, destroyed or thrown overboard and not satisfactorily accounted for.
21. For attempting to depart without port-clearance.
22. For departing without port-clearance.
23. For pilot taking charge of vessel without port-clearance.
24. For refusing to receive officer of Customs on board.
25. For disobeying section 63.
26. For masters resisting search, removing marks, etc., placed by Customs-officer, secretly conveying away goods or opening hatchway after fastened by Customs-officer.
27. For lading in absence of Customs-officer.
28. For removing goods contrary to section 70, 72 or 75.
29. For sending goods without, or in excess of, boat-note.
30. For non-receipt or non-delivery or non-signing of boat-note.
31. For not landing or shipping goods in accordance with section 73, 77 or 78.
32. For goods being found in unlicensed cargo-boats.
33. For discharging goods not duly entered in manifest.
34. For goods being found concealed and unaccounted for.
- 34A. Abatement of duty on goods on which duty is levied on quantity.
35. For goods found not agreeing in description and quantity with entry in manifest.
36. For removing goods after landing and before due entry.
37. For goods being brought to be passed through Custom-house when packages differ from description given, contents are misdescribed or mis-stated, goods are concealed amongst them.
38. For misdescription of goods.

SECTIONS

167 Punishments for offences—*continued*

- 39 For taking or passing goods without entry
- 40 Prohibited or dutiable goods concealed in baggage
- 41 For improper carrying into warehouse
- 42 For withholding or removing, before examination, goods entered to be warehoused
- 43 For warehousing goods improperly
- 44 For refusing to open private warehouse when duty required
- 45 For neglecting to stow goods properly in warehouse
- 46 For importer or owner of warehoused goods clandestinely gaining access
- 47 For opening or altering warehoused goods
- 48 For deficiencies in contravention of section 98 or 100 of goods in a private warehouse
- 49 For failing to produce goods when required
- 50 For concealing, removing, abstracting or transferring from one place to another goods duly warehoused
- 51 For excess in private warehouse over registered quantity
- 52 For removing warehoused goods improperly
- 53 For taking goods out of warehouse without paying duty
- 54 For infringing rules or orders regarding transshipment
- 55 For shipping goods before entry outwards
- 56 For shipping goods not in shipping-bill
- 57 For not giving notice of short shipping or re-landing as required by section 140
- 58 For landing at place other than that for which goods have been cleared
- 59 For deficiency in goods on which drawback has been paid, on board vessel referred to in section 142
- 60 For irregularly re-landing spirituous liquors
- 61 For contravening rules relating to spirit
- 62 For contravention of rules made under section 157
- 63 For contrary to such rules touching at foreign port or not declaring in writing that vessel touched at foreign port
- 64 For non compliance with section 158 159 or 160
- 65 For failure to produce certificate

SECTIONS.

199. Wharfage fees.
200. Duplicates of documents may be granted on payment of fee.
201. Amendment of documents.
202. Custom-house agents.
203. Agent to produce authority if required.
204. Rules to be notified.
205. Publication of notifications in local official Gazettes.
206. Remission of duty and compensation to owner in certain cases.
207. Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

SCHEDULE.

PART I.—ACTS REPEALED.

PART II.—FORMS—

- A.—Form of Bond for Import-duty.
- B.—Form of Bonded Warehouse Warrant.
- C.—Form of Bond for the Removal of Spirit from a Licensed Distillery.

ACT No. VIII OF 1878.¹

[8th March 1878.]

An Act to consolidate and amend the law relating to the levy of Sea Customs-duties.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties; It is enacted as follows:—

CHAPTER I.

PRELIMINARY.

I. This Act may be called the Sea Customs Act, 1878.

It extends to the whole of British India, and shall come into force on the first day of April 1878.

¹ For Statement of Objects and Reasons, see Gazette of India, 1876, Pt. V, p. 1402; for the Report of the Select Committee, see *ibid*, 1877, Pt. V, p. 491; for discussions in Council, see *ibid*, 1876, Supplement, p. 1289; *ibid*, 1877, Supplement, p. 2770; *ibid*, 1878, Supplement, p. 448.

The Inland Bonded Warehouses Act, 1896 (8 of 1896), is to be read with and taken as part of this Act—see s. 1 (2) of the former Act.

The Act has been declared to be in force in Upper Burma generally (except the Shan States) by s. 4 (1) of the Burma Laws Act, 1898 (13 of 1898), Bur. Code.

Ss. 144 to 154 have been declared to be in force in the Angul District, see the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. & O. Code.

Clause (a) of s. 3, ss. 6, 7, 8, 9, 19, 167 (in certain respects), 168, 170-176, 178-184, 186, 188-193, 197-198 have been extended to British Baluchistan by notification under s. 5 of Act 14 of 1874, see Gazette of India, 1926, Part II-A, p. 343.

(Chapter I—Preliminary)

2 The Acts mentioned in [Part I of the Schedule] hereto annexed Repeal of enactments
are repealed to the extent specified therein

All references to any of the said Acts, in Acts passed subsequently References to enactments repealed
thereto, shall be read as if made to the corresponding provisions of this Act

All appointments rules declarations exemptions and delegations Saving of appointments, etc
made, powers conferred, forms and conditions prescribed values fees, rates and periods fixed and notifications instructions directions prohibitions, passes and licenses issued under any Act hereby repealed shall, if the same are in force at the time this Act comes into force be deemed to have been respectively made conferred prescribed fixed and issued under this Act, in so far as they are consistent herewith

3 In this Act, unless there be something repugnant in the subject Interpretation
or context,—

- (a) "["Chief Customs authority" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924, and includes in relation to any power or duty which the Governor General in Council may by notification in the Gazette of India transfer from the Central Board of Revenue to a Local Government the Local Government or such officer as the Local Government may appoint in that behalf] Chief Customs authority
- (b) "Chief Customs-officer" denotes the Chief Executive Officer of Sea customs for any port to which this Act applies 'Chief Customs officer'
- (c) "Customs collector" includes every officer of Customs for the time being in separate charge of a custom-house or duly authorized to perform all or any special duties of an officer so in charge Customs collector
- (d) "customs port" means any place except Aden declared under section 11 to be a port for the shipment and landing of goods "Customs port"
- (e) "foreign port" means Aden and any place beyond the limits of British India 'Foreign port'

¹ These words were substituted for the words "the first schedule" by the Repealing and Amending Act 1891 (12 of 1891)

² This clause was substituted by s 4 and Sch of the Central Board of Revenue Act 1924 (1 of 1924)

³ For order declaring ports in Cochin and Travancore to be British Indian ports for the purposes of the levy of customs duties and the payment of drawback see Gazette of India, 1865 p 780 and Gen R and O Vol II, p 63

For order declaring ports in the territories of His Highness the Gaekwar the Thakur of Bhonslegger and the Nawab of Cambay to be British Indian ports for the purposes of the Act see Gazette of India 1866 p 608 and Gen R and O Vol II p 63

⁴ As to the ports of the Janjira State in Bombay, see Gazette of India 1864 and 1865 Pt I p 202 and 110 respectively

(Chapter I.—Preliminary. Chapter II.—Appointment and Powers of officers, etc.)

“Vessel.”

(f) ¹“vessel” includes anything made for the conveyance by water of human beings or property:

“Coasting vessel.”

(g) “coasting vessel” denotes any vessel proceeding from one customs-port to another customs-port, whether touching at any intermediate foreign port or not, or proceeding from or to a customs-port to or from a place declared to be a port under section 12:

“Master.”

(h)² “master,” when used in relation to any vessel, means any person, except a pilot or harbour-master, having command or charge of such vessel:

“Warehousing port.”

(i) “warehousing port” means any customs-port declared under section 14 to be a warehousing port:

“Warehouse.”

(j) “warehouse” denotes any place appointed or licensed under section 15 or section 16:

“Official gazette.”

³[(k) “official Gazette” means, in relation to a notification issued by a Local Government, the local official Gazette and, in relation to a notification issued by the Central Board of Revenue, the Gazette of India.]

Agent of owner of goods to be deemed owner for certain purposes.

4. When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs-collector, such person shall, for such purposes, be deemed to be the owner of such goods.

When ship's agent may act for master.

5. Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval of the Customs-collector, be done by a ship's agent.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, ETC.

Appointment of Customs-officers.

⁴[6. The Governor General in Council may appoint such persons⁵ as he thinks fit to be officers of Customs, and to exercise the powers conferred, and perform the duties imposed, by this Act on such officers.]

¹ Cf. definition in s. 3 (56) of the General Clauses Act, 1897 (10 of 1897).

² Cf. definition in s. 3 (52) of the General Clauses Act, 1897 (10 of 1897).

³ Clause (k) was inserted by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924).

⁴ Section 6 was substituted by s. 4 and Sch., *ibid.*

⁵ For appointment of officers of customs, see Gen. R. and O., Vol. II, pp. 37-39.

(Chapter II—Appointment and Powers of officers, etc Chapter III—
Appointment of Ports, Wharves, Custom-houses, Ware-houses and
Boarding and Landing Stations)

7. The Governor General in Council may delegate¹ to any Local Government or to the Chief Customs authority any power conferred upon him by section 6, and the Local Government or the Chief Customs-authority may delegate to any officer of Customs any power so delegated to it]

Delegation of powers under section 6.

8. At any place for which there is no custom-house, the Collector of the district and the officers subordinate to him shall, unless the Local Government otherwise directs, perform all duties imposed by this Act on a Customs-collector and other officers of Customs

Performance of duties of Customs collector, where no custom house

9. The Chief Customs-authority may from time to time * * * * *
* * * make rules consistent with this Act—

Power to make rules.

(a) prescribing and limiting the powers and duties of officers of Customs,

(b) regulating the delegation of their duties by such officers and

(c) generally to carry out the provisions of this Act

10. No Chief Customs-authority or Chief Customs-officer and no other officer of Customs whom such Chief authority or Chief officer deems it necessary to exempt on grounds of public duty shall be compelled to serve on any jury or inquest, or as an assessor

Customs officers exempted from service on jury or inquest or as assessors

CHAPTER III

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES, AND BOARDING AND LANDING STATIONS

11. [The Chief Customs-authority] may from time to time by notification in the official Gazette,²—

Power to appoint ports, wharves and custom-houses

(a) declare the places * * * * * which alone shall be ports for the shipment and landing of goods,

¹ Section 7 was substituted by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924)

² For such delegation of powers see Gen. R. and O., Vol. II, pp. 39-41

³ In Madras, officers of the Salt, Abkari and Customs Departments have been directed to perform the duties imposed by ss. 174 and 182 in regard to imported intoxicating drugs prepared from the hemp plant see Port St. George Gazette, 1901 Pt. I, p. 95. As to other officers, see *ibid.*, 1910 Pt. I, p. 93

⁴ The words "with the sanction of the Local Government" were omitted by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914)

⁵ These words were substituted by s. 4 and Schedule of the Central Board of Revenue Act, 1924 (4 of 1924)

⁶ For notifications issued under this section, see different local rules and orders.
⁷ The words "within the territories administered by it" were omitted by s. 4 and Schedule of Act 4 of 1924

(Chapter III.—Appointment of Ports, Wharves, Custom-houses, Warehouses and Boarding and Landing Stations.)

- (b) declare the limits of such ports;
- (c) ¹appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods;
- (d) ¹declare the limits of any such wharf;
- (e) alter the name of any such port or wharf; and
- (f) declare what shall, for the purposes of this Act, be deemed to be a custom-house, and the limits thereof².

Power to declare places to be ports for coasting-trade.

12. ³[The Chief Customs-authority] may also from time to time in like manner declare places to be 'ports for the carrying on of coasting-trade with customs-ports, or with any specified customs-port, and for no other purpose.

Power to declare that foreign ports shall be regarded as customs-ports for certain purposes.

13. The Governor General in Council may from time to time direct, by notification⁵ in the Gazette of India, that all goods or any specified class of goods imported from or exported to any foreign port to or from a customs-port shall, with such limitations and on such conditions (if any) as he thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a customs-port, as the case may be.

Power to declare warehousing ports.

14. ³[The Chief Customs-authority] may from time to time declare, by notification in the official Gazette, that any customs-port shall be a warehousing port⁶ for the purposes of this Act.

Power to appoint public warehouses.

15. At any warehousing port,⁷ the ⁸[Chief Customs-officer] may, from time to time, ⁹appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment.

¹ For appointment of certain places to be wharves for the landing and shipping of goods, see Gen. R. and O., Vol. II, pp. 43-67.

² For notification by the Government of Madras declaring certain areas and buildings to be a custom-house at the Port of Madras, see Fort St. George Gazette, 1904, Pt. I, p. 477. For the appointment of His Majesty's Mint, Bombay, as a Customs-house for certain purposes, see Gen. R. and O., Vol. II, p. 67.

³ See foot-note 5 on p. 141.

⁴ For notifications issued under s. 12, see different local rules and orders.

⁵ For orders issued under s. 13, see Gen. R. and O., Vol. II, p. 68.

⁶ For notifications under the powers conferred by this section, see different local rules and orders.

⁷ As to power of Chief Customs-authority to appoint a public or license a private warehouse at places other than warehousing ports, see s. 4 (1) of the Inland Bonded Warehouses Act, 1896 (8 of 1896).

⁸ These words were substituted for the words "Chief Customs-authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

⁹ For instances of notifications appointing warehouses in—

Bengal, see Ben. R. and O.;
Bombay, see Bom. R. and O.; and
Burma, see Bur. R. M.

(Chapter III.—Appointment of Ports, Wharves, Custom-houses, Warehouses and Boarding and Landing Station. Chapter IV.—Prohibitions and Restrictions of Importation and Exportation.)

16. At any warehousing port¹ the Chief Customs-officer may from time to time license private warehouses² wherein dutiable goods may be deposited as aforesaid.

Power to license private warehouses.

Every application for a license for a private warehouse shall be in writing, and shall be drawn up in such form as is from time to time prescribed by the ³[Chief Customs-officer] and shall be signed by the applicant.

Form of application for license.

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs-officer.

Revocation of license

17. The ³[Chief Customs-officer] may from time to time appoint, in or near any customs-port, stations or limits at or within which vessels arriving at or departing from such port shall bring-to for the boarding or landing of officers of Customs, and may, unless separate provision therefor has been made under the Indian Ports Act, 1875,⁴ direct at what particular place in any such port vessels, not brought into port by pilots, shall anchor or moor.⁵

Stations for Customs-officers to board and land.

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

18. No goods specified in the following clauses shall be brought, whether by land or sea, into⁶ British India:—

“ ”

(b) counterfeit coin: or coin which purports to be Queen's coin of India, or to be coin made under the Native Coinage Act,

¹ As to power of Chief Customs-authority to appoint a public or license a private warehouse at places other than warehousing ports, see s. 4 (1) of the Indian Bonded Warehouses Act, 1890 (8 of 1890).

² No arms, ammunition or military stores may be deposited in any warehouse licensed under s. 16 without the sanction of the Local Government, see Indian Arms Act, 1878 (11 of 1878), s. 7.

³ These words were substituted for the words “Chief Customs-authority” by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

⁴ See now the Indian Ports Act, 1908 (15 of 1908).

⁵ For notifications issued under s. 17 in—

(1) Bengal, see Ben. R. and O.

(2) Bombay Presidency, see Bom. R. and O.

⁶ See notes to s. 3 (e), *supra*.

⁷ Clause (a) was repealed by the Indian Copyright Act, 1914 (3 of 1914).

(Chapter IV.—Prohibitions and Restrictions of Importation and Exportation.)

1876, but which is not of the established standard in IX of 1876, weight or fineness:

(c) any obscene book, pamphlet, paper, drawing, painting, representation, figure or article:

¹[(d) goods having applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code, or a false trade-description within the meaning of the Indian Merchandise Marks Act, 1889: XLV of 1860.
IV of 1889

(e) goods made or produced beyond the limits of the United Kingdom and British India, and having applied thereto any name or trade-mark being, or purporting to be, *
* * * * ² the name or trade-mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India unless—

(i) the name of trade-mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) ³[the country in which that place is situated is] in that indication indicated in letters as large and conspicuous as any letter in the name or trade-mark, and in the same language and character as the name or trade-mark:]

⁴[(f) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or,

(iii) having been manufactured within those limits have been manufactured beyond the limits of British India in

¹ Cls. (d) and (e) were substituted for the original cl. (d) by s. 10 (1) of the Indian Merchandise Marks Act, 1889 (4 of 1889).

² The words "or being a colourable imitation of" were repealed by the Sea Customs (Amendment) Act, 1904 (16 of 1904).

³ These words were substituted for the words "that place and the country in which it is situated are" by s. 3 of the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (9 of 1891).

⁴ Cl. (f) was added by s. 10 (2) of the Indian Merchandise Marks Act, 1889 (4 of 1889).

(Chapter IV—Prohibitions and Restrictions of Importation and Exportation)

premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881¹]

²[(g) matches made with white phosphorus]

19. The Governor General in Council may from time to time, by notification in the Gazette of India, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India³ [or any specified part thereof, either generally or from or to any specified country, region, port or place beyond the limits of British India]

Power to prohibit or restrict importation or exportation of goods

⁴[19A. (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19 as the case may be or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs officer or other officer appointed by the [Chief Customs authority] in this behalf may require the regulations under this section, whether as to information, security conditions or other matters to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported]

Detention and confiscation of goods whose importation is prohibited.

(2) The Governor General in Council may make regulations either general or special, respecting the detention and confiscation of goods the importation of which is prohibited and the conditions if any to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence

(3) Where there is on any goods a name which is identical with or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character by the name

¹ Repealed. See now Act 12 of 1911.

² This clause was added by s. 3 of the White Phosphorous Matches Prohibition Act, 1913 (5 of 1913).

³ For list of notifications issued under s. 19, see Gen. R. and O., Vol. II, pp. 70 to 125.

⁴ These words were substituted for the words "or any specified part of British India" by s. 2 of the Sea Customs (Amendment) Act, 1914 (12 of 1914).

⁵ S. 19A was added by s. 11 of the Indian Merchandise Marks Act, 1889 (4 of 1889).

For notification appointing the Assistant Political Resident, Aden, for the time being in charge of the Akkari Department to be the officer at Aden authorised to act under this section see Bombay Government Gazette, 1908, Pt. I, p. 524.

⁶ These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

⁷ For regulations in respect of piece-goods made under this sub-section, see Gen. R. and O. Gazette of India, 1893, Pt. I, p. 127, *ibid.*, 1895, Pt. I, p. 114, *ibid.*, 1907, Pt. I, p. 401.

(Chapter IV.—*Prohibitions and Restrictions of Importation and Exportation.* Chapter V.—*Levy of, and Exemption from, Customs-duties.*)

of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(6) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes.]

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

Goods
dutiable.

20. Except as hereinafter provided, customs-duties shall be levied at such rates as may be prescribed by or under any law¹ for the time being in force, on—

- (a) goods imported or exported by sea into or from any customs-port from or to any foreign port;
- (b) opium, salt or salted fish imported by sea from any customs-port into any other customs-port;
- (c) goods brought from any foreign port to any customs-port, and without payment of duty, there transhipped for, or thence carried to, and imported at, any other customs-port; and
- (d) goods brought in bond from one customs-port to another:

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Goods
partially
composed of
dutiable
articles.

21. Except as otherwise expressly provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with

¹ See the Indian Tariff Act, 1894 (8 of 1894).

² The proviso to s. 20 was omitted by s. 2 of the Sea Customs (Amendment) Act, 1924 (8 of 1924).

(Chapter V.—Levy of, and Exemption from, Customs-duties.)

the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty.

¹22. The Governor General in Council may from time to time, by notification in the Gazette of India, fix, for the purpose of levying duties, tariff-values of any goods exported or imported by sea on which customs-duties are by law imposed and alter any such values fixed by any Tariff Act² for the time being in force

Power to fix tariff values

23. The Governor General in Council may from time to time, by notification in the Gazette of India, ³exempt any goods imported into, or exported from, British India, or into or from any specified port therein, from the whole or any part of the customs-duties leviable on such goods

General power to exempt from customs duties

The '[Chief Customs-authority] may '[with the previous sanction of the Governor General in Council,] by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, to be stated in such order, any goods on which customs-duties are leviable

Power to authorize, in special cases, exemption from duty.

24. The Customs-collector may, subject to any general rules relating to the landing and shipping of passengers' baggage and the passing of the same through the custom-house which may be made under section 75, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use, or as goods subject to duty.

Baggage in actual use

25. If goods produced or manufactured in British India be imported into any customs-port from any foreign port, such goods shall be liable to all the duties, conditions and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof.

Re imported articles of country produce

Provided that, if such importation takes place within three years after the exportation of such goods, and it is proved to the satisfaction of the Customs-collector that the property in such goods has continued in the person by whom, or on whose account, they were exported, the goods may be admitted without payment of duty.

Proviso

26. Any goods produced or manufactured in British India which have been exported therefrom, and on the exportation of which any drawback of excise has been received, shall on being imported into any

Excise-duty on importation of certain country goods

¹S 22 was repealed by the Indian Tariff (Amendment) Act, 1910 (4 of 1910), so far as it related to that Act

²See now the Indian Tariff Act, 1891 (8 of 1891)

³See Genl R & O, Vol II, pp 123-147.

⁴These words were substituted for the words "Local Government" by s 4 and Sch of the Central Board of Revenue Act, 1921 (1 of 1921)

⁵These words were inserted by s 11 of the Indian Tariff Act, 1891 (8 of 1891)

(Chapter V.—Levy of, and Exemption from, Customs-duties.)

customs-port, be subjected, unless the ¹[Chief Customs-officer] in a particular case otherwise directs by special order, to payment of excise duty, at the rate to which goods of the like kind and quality are liable at such port.

Goods derelict and wreck.

27. All goods derelict, jetsam, flotsam and wreck, brought or coming into any place in British India, shall be subject to the same duties, as any, to which goods of the like kind are for the time being subject to importation at any customs-port, and shall in other respects be deemed with as if they were imported from a foreign port, unless it be shown to the satisfaction of the Customs-collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free.

Country provisions and stores may be shipped free of duty.

28. Provisions and stores produced or manufactured in British India, and required for use on board of any vessel proceeding to any foreign port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs-collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart:

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration.

Owner to declare real value, etc., of goods in bill of entry or shipping bill

29. On the importation into, or exportation from, any customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill of entry or shipping bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

Power to require production of invoice, etc.

In case of doubt, the Customs-collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity and description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity and description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information:

Provided that, if the owner makes and subscribes a declaration before the Customs-collector, to the effect that he is unable, from want of full information, to state the real value or contents of any case, package or parcel of goods, then the Customs-collector shall permit him, previous to the entry thereof, (1) to open such case, package or parcel, and examine the contents in presence of an officer of Customs, or (2) to deposit such case, package or parcel in a public warehouse appointed under section 1

¹ These words were substituted for the words "Chief Customs-officer" by section 2 and Part I of the Schedule of the Decentralization Act, 1913.

(Chapter V—Levy of, and Exemption from, Customs duties)

without warehousing the same, pending the production of such information

30 For the purposes of this Act the real value shall be deemed to be— ‘Real value’
defined

(a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof or

(b) where such price is not ascertainable the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid

31 Goods chargeable with duty upon the value thereof but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay be examined by an officer of Customs. If it appears that the real value of such goods is correctly stated in the bill of entry or shipping bill, the goods shall be assessed in accordance therewith Examination
of *ad valorem*
goods

32 If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill of entry or shipping bill such officer may detain such goods Procedure
where such
goods are
under valued
by owner

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value thereof as estimated by him, and the Customs collector shall within two clear working days after such detention or within such reasonable period as may with the consent of the parties be arranged determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to return the same for the use of Government

If the goods be returned for the use of Government the Customs collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods in the same manner as if they had been transferred by ordinary sale, and shall after due notice in the local official Gazette or some local newspaper and without unnecessary delay cause them to be put up to public auction in wholesale lots for cash on delivery

If the Customs collector deems the highest offer made at such sale to be inadequate he may either adjourn the sale to some other day to be

(Chapter V.—Levy of, and Exemption from, Customs-duties.)

notified as aforesaid, or buy in the goods, and without unnecessary delay dispose of them for the benefit of Government.

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable and all charges incurred by Government in connection with them, a portion not exceeding one-half of the overplus shall, at the discretion of the Chief Officer of Customs, be payable to the officer who detected the undervaluation of the goods.

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such undervaluation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry, on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of Customs may determine.

Abatement
allowed
on damaged
goods.

33. If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are, in consequence of damage sustained before delivery of the bill of entry, of value less than that stated in such bill, the Customs-collector, on being satisfied of the fact, may allow abatement of duty accordingly.

Reduced duty
how ascer-
mined

The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner:—

- (a) the real value of such goods may be fixed on appraisement by an officer of Customs and the duty may be assessed on the value so fixed; or
- (b) the goods may, after due notice in the local official Gazette or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill of entry), and at such place, as the Customs-collector appoints; and the duty may be assessed on the gross amount realized by such sale, without any abatement or deduction, except (in the case of goods imported) or so much as represents the duties payable on the importation thereof.

Deterioration
of tariff-
value goods.

34. When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill of entry, deteriorated to the extent of more than one-tenth of their value, the duty on such goods shall, if the owner thereof so desires, be assessed *ad valorem*.

The real value of such goods shall be ascertained as provided in section 33; and the duty shall be assessed thereon.

(Chapter V—Levy of, and Exemption from, Customs duties)

1[34A Where the Customs collector is satisfied that any goods on which duties are levied on quantity and not on value, and which are of a kind to which the Governor General in Council has, by notification in the Gazette of India, declared that the provisions of this section shall apply, have before delivery of the bill of entry deteriorated to the extent of more than one-tenth of their value, he may allow an abatement of duty proportionate to the extent of such deterioration]

Abatement of duty on goods on which duty is levied on quantity

35 No abatement of duty on account of [any deterioration] shall be allowed on wine, spirit or beer, or [save as provided by section 34A] on any other articles on which duties are levied on quantity and not on value

No abatement when duty is levied on quantity

36 Except as provided in section 94, no amendment of a bill of entry or shipping bill relating to goods assessed for duty on the declared value quantity or description thereof shall be allowed after such goods have been removed from the custom-house

Restriction on amendment of bill of entry or shipping bill

37 The rate of duty and the tariff valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill of entry thereof is delivered to the Customs collector under section 86¹

Alteration of import-duty, or tariff valuation

²Provided that, if such goods are warehoused under this Act, the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date ³[of the actual removal of such goods from the warehouse in the case of goods delivered out of a warehouse for home consumption and in the case of goods delivered out of a warehouse for removal under bond to be re-warehoused where the duty is paid on such goods without their being re-warehoused the rate and valuation (if any) in force on the date on which duty is paid]

Explanation—A bill of entry shall, for the purposes of this section be deemed to be delivered when it is first presented to the proper officer of Customs

¹ This section was inserted by s. 2 of the Sea Customs (Amendment) Act 1927 (8 of 1927)

² These words were substituted for the word "damago" by s. 3, *ibid*

³ These words were inserted by s. 3 *ibid*

⁴ See s. 2 of the Petroleum (Customs Duty) Act 1899 (2 of 1899) which is as follows—

"2 The rate of duty applicable to petroleum of which the bill of entry is delivered within the meaning of section 37 of the Sea Customs Act 1878, to the Customs-collector under section 86 of that Act after the passing of this Act shall be the rate of duty specified in the second schedule to the Indian Tariff Act, 1892 as amended by this Act." See now the Indian Tariff Act 1894 (8 of 1894)

⁵ This proviso was substituted for the original proviso by s. 1 of the Sea Customs Act (1878) Amendment Act 1899 (8 of 1899)

⁶ These words were substituted for the words "on which application is made to clear such goods from the warehouse for home consumption" by s. 2 of the Sea Customs (Amendment) Act, 1915 (9 of 1915)

(Chapter V.—Levy of, and Exemption from, Customs-duties.)

Alteration of
export-duty
or tariff-
valuation.

38. The rate of duty and tariff-valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping bill of such goods is delivered under section 137:

¹[Provided that where the shipment of any goods is permitted without a shipping bill or in anticipation of the delivery of a shipping bill, the rate of duty and tariff valuation, if any, applicable shall be the rate and valuation in force at the time when shipment of the goods commences.]

Payment of
duties short-
levied or
erroneously
refunded.

39. When customs-duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of the officers of Customs, or through mis-statement as to real value, quantity or description on the part of the owner,

or when any such duty or charge, after having been levied, has been, owing to any such cause, erroneously refunded,

the person chargeable with the duty or charge so short-levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within three months from the date of the first assessment or making of the refund:

and the Customs-collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

No refund of
charges erro-
neously
levied or
paid, unless
claimed
within three
months.

40. No customs-duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment.

Power to
give credit
for, and keep
account-
current of,
duties and
charges.

41. The Customs-collector may, if he thinks fit, instead of requiring payment of customs-duties and charges due from any mercantile firm or public body, at the time such duties and charges are payable under this Act, keep with such firm or body an account-current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Customs-collector to cover the amount which may at any time be due from them in respect of such duties and charges.

¹ This proviso was added by s. 3 of the Sea Customs (Amendment) Act, 1914 (12 of 1914).

CHAPTER VI

DRAWBACK

42 When any goods, capable of being easily identified, which have been imported by sea into any customs-port from any foreign port, and upon which duties of customs have been paid on importation, are re-exported by sea from such customs-port to any foreign port, or as provisions or stores for use on board a ship proceeding to a foreign port, seven-eighths of such duties shall, except as otherwise hereinafter provided, be repaid as drawback Drawback allowable on re export

Provided that, in every such case, the goods be identified to the satisfaction of the Customs collector at such customs port, and that the re-export be made within two years from the date of importation, as shown by the records of the custom house, or within such extended term as the Chief Customs authority [or the Chief Customs-officer,] on sufficient cause being shown, in any case determines Conditions for grant of drawback.

[Provided further that the Chief Customs officer shall not extend the term to a period exceeding three years]

43 When any goods having been charged with import-duty at one customs-port and thence exported to another are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if they had been so re-exported from the former port Drawback on goods exported to customs port and thence to foreign port

Provided that, in every such case the goods be identified to the satisfaction of the officer in charge of the custom house at the port of final exportation, and that such final exportation be made within three years from the date on which they were first imported into British India Proviso.

44 A drawback of the whole of the customs duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service, unless such wine and spirit have been warehoused without payment of duty on the first entry thereof Drawback of duties on wine and spirit allowed for officers of Navy

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively, that is to say—

	Callous
For every Admiral	1 260
Vice Admiral	1,000
Rear Admiral	840
Captain of 1st and 2nd rate	630
Captain of 3rd 4th and 5th rate	420
Captain of an inferior rate	210
Lieutenant or other Commanding Officer, Marine officer, Master, Purser or Surgeon	105

¹ These words were inserted by s 2 and Part I of Schedule of the Decentralization Act 1914 (4 of 1914)

² This additional proviso was inserted by s 2 and Part I of Sch, *ibid*

(Chapter VI.—Drawback.)

Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.

45. Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves as well as the place and date of the last supply for which drawback was allowed.

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the port of shipment, to be shipped under their care; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same.

Transfer of wine or spirit from one naval officer to another.

46. The Customs-collector may permit the transfer of any such wine or spirit from one naval officer to another naval officer on board of the same, or of any other such vessel, as part of his authorized quantity;

or may permit the transshipment of any such wine or spirit from one vessel to another for the use of the same naval officer;

or the re-landing and warehousing of any such wine or spirit for future re-shipment.

The Customs-collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption.

Provisions and stores for Her Majesty's Navy.

47. Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped or re-landed and warehoused, free of duty;

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application.

Indian Marine and Marine survey.

48. The provisions of sections 44, 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's Indian Marine and Marine Survey on board of any of the ships of such Marine or Survey proceeding to any port out of India, and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of such Marine or Survey.

Power to declare what goods are identifiable; and to prohibit

49. The Governor General in Council may from time to time, by notification in the Gazette of India,—

(a) declare what goods shall for the purpose of this Chapter, be deemed to be capable of being easily identified; and

(Chapter VI —Drawback Chapter VII —Arrival and Departure of Vessels)

(b) prohibit the payment of drawback upon the re exportation of goods ¹[or any specified goods or class of goods] to any specified foreign port ² * drawback in case of specified foreign port.

50. Notwithstanding anything hereinbefore contained, no drawback shall be allowed— When no drawback allowed

(a) upon goods not included in the export manifest, or

(b) where the goods to be exported are of less value than the amount of drawback claimed, or

(c) where the claim is for drawback amounting, in respect of any single shipment, to less than five rupees, and the Customs collector thinks fit to reject it or

(d) on salt, salted fish or opium

51. No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re-export Time to claim drawback

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment When payment made

52. Every person, or his duly authorized agent, claiming drawback on any goods duly exported, shall make and subscribe a declaration that such goods have been actually exported, and have not been re-landed and are not intended to be re-landed at any customs-port, and that such person was at the time of entry outwards and shipment, and continues to be, entitled to drawback thereon Declaration by parties claiming drawback

CHAPTER VII

ARRIVAL AND DEPARTURE OF VESSELS *

Arrival and Entry of Vessels inwards

³[53 The ⁴[Chief Customs-authority] may, by notification in the official Gazette, fix a place in any river or port, beyond which no vessel arriving shall pass until a manifest has been delivered to the pilot, officer of Customs or other person duly authorized to receive the same Power to fix places beyond which inward bound vessels are not to proceed until manifest delivered

¹ These words were inserted by s. 4 of the Sea Customs (Amendment) Act, 1914 (12 of 1914)

² The words "in India" were repealed by s. 4 of Sea Customs (Amendment) Act, 1914 (12 of 1914)

³ For rules as to manifest

⁴ These words

Part I of Schedule

⁵ The word "in

Act, 1924 (4 of 1924)

of Aden, see Bom. R. and O. of Government" by s. 2 and (4 of 1914)

the Central Board of Revenue

(Chapter VII.—Arrival and Departure of Vessels.)

Delivery of
manifest
when vessel
anchors be-
low place so
fixed.

If, in any river or port wherein a place has been fixed by the ¹[Chief Customs-authority] under this section, the master of any vessel arriving remains outside or below the place so fixed, such master shall, nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the pilot, officer of Customs or other person authorised to receive the same.

Delivery of
manifest
where no
place has
been so fixed.

54. If any vessel arrives at any customs-port in which a place has not been so fixed, the master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the port, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same.

Signature
and contents
of manifest.

55. Every manifest shall be signed by the master, and shall specify all goods imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped or taken on to another port, and all ship's stores intended for consumption in port or on the homeward voyage, and shall contain such further particulars, and be made out in such form,² as the ³[Chief Customs-officer] may from time to time direct.

Amendment
of errors in
manifest.

The Customs-collector shall permit the master to amend any obvious error in the manifest, or to supply any omission which in the opinion of such Collector results from accident or inadvertence, by furnishing an amended or supplementary manifest,

and may, if he thinks fit, levy thereon such fee as the ³[Chief Customs-officer] from time to time directs.

Except as herein provided, no import manifest shall be amended.

Duty of
person re-
ceiving
manifest.

56. The person receiving a manifest under section 53 or 54 shall countersign the same and enter thereon such particulars as the ³[Chief Customs-officer] from time to time directs in this behalf.

Bulk not to
be broken
until mani-
fest, etc.,
delivered,
and vessel
entered in-
wards.

57. No vessel arriving in any customs-port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided; nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs-collector, and an order has been given thereon for such entry.

Master, if
required, to
deliver bill
of lading,
etc., to cus-
toms-collec-
tor,
and answer
questions.

58. The master shall, if required so to do by the Customs-collector at the time of presenting such application, deliver to the Customs-collector the bill of lading or a copy thereof for every part of the cargo laden on board, and any port-clearance, cocket or other paper granted in respect

¹ These words were substituted for the words "Local Government" by s. 2 and Part I of Schedule of the Decentralization Act, 1914 (4 of 1914).

² For form prescribed in Madras, see Mad. R. and O., and in Burma, see Bur. R. M.

³ These words were substituted for the words "Chief Customs-authority" by s. 2 and Part I of Schedule of the Decentralization Act, 1914 (4 of 1914).

(Chapter VII —Arrival and Departure of Vessels)

of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer

The Customs collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application

59 Notwithstanding anything contained in section 57, the Customs-collector may grant, prior to receipt of the manifest, and to the entry inwards of the vessel, a special pass¹ permitting bulk to be broken

Special pass for breaking bulk

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs authority

60 Notwithstanding anything contained in section 53, 54, 57 or 58, the Customs collector may accept from the ship's agent, in lieu of the master, delivery of the manifest or of any other document required by those sections to be delivered by the master

Manifest, etc., may be delivered by ship's agent

Entry outwards, Port-clearance and Departure of Vessels

61. No vessel shall take on board any part of her export cargo, until a written application for entry of such vessel outwards, subscribed by the master of such vessel, has been made to the Customs-collector, or before an order has been given thereon by such officer for such entry

Order for entry outwards to be obtained before export cargo is shipped

Every application made under this section shall specify the name, tonnage and national character of the vessel, the name of the master, and the name of every place for which cargo is to be shipped

62 No vessel, whether laden or in ballast, shall depart from any customs port until a port-clearance has been granted by the Customs-collector or other officer duly authorized to grant the same

No vessel to depart without port clearance

And no pilot shall take charge of any vessel proceeding to sea, unless the master of such vessel produces a port-clearance

No pilot to take charge of vessel proceeding to sea without production of port clearance

63. Every application for port clearance shall be made by the master at least twenty-four hours before the intended departure of the vessel

Application for port clearance

¹ For rules in force in Bombay and Karachi as to special passes for breaking bulk see Bom. R. and O.

² For rules in force in Madras under ss. 59 and 57, see Mad. R. and O.

(Chapter VII.—Arrival and Departure of Vessels.)

Master on
applying for
port-clear-
ance to deli-
ver docu-
ments and
answer
questions.

The master shall at the time of applying for port-clearance—

- (a) deliver to the Customs-collector a manifest in duplicate in such form¹ as may from time to time be prescribed by the ²[Chief Customs-officer] signed by such master specifying all goods to be exported in the vessel and showing separately all goods and stores entered in the import manifest, and not landed or consumed on board or transhipped:
- (b) deliver to the Customs-collector such shipping bills or other documents as such Customs-collector acting under the general instructions of such ²[Chief Customs-officer] requires; and
- (c) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him.

The provisions of section 55 relating to the amendment of import manifests shall, *mutatis mutandis*, apply also to export manifests delivered under this section.

Power to
refuse port-
clearance.

³64. The Customs-collector may refuse port-clearance to any vessel until—

- (a) the provisions of section 63 are complied with;
- (b) all port-dues and other charges and penalties due by such vessel, or by the owner or master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by deposit at such rate, as such Customs-collector directs;
- (c) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167, No. 17, and furnishes security for the discharge of the same;
- (d) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import cargo in respect of such goods.

¹ For form prescribed in Burma, see Burma Gazette, 1903, Pt. IV, p. 570; in Madras, see Mad. R. and O.

² These words were substituted for the words "Chief Customs-authority" by s. 2 and Part I of Schedule of the Decentralization Act, 1914 (4 of 1914).

³ For form prescribed in Burma under this section, see Burma Gazette, 1903, Pt. IV, p. 66; in Madras, see Mad. R. and O.

(Chapter VII.—Arrival and Departure of Vessels. Chapter VIII.—
General Provisions affecting Vessels in Port.)

A ship's agent delivering a declaration under clause (c) of this section shall be liable to all penalties which might be imposed on the master under section 167, No 17, and a ship's agent delivering a declaration under clause (d) of this section shall be bound to discharge all claims referred to in such declaration

65. When the Customs-collector is satisfied that the provisions of section 63, and if necessary of clauses (b) and (c) and (d) of section 64, have been complied with, he shall grant a port-clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs

66. Notwithstanding anything contained in sections 64 and 65, the Customs-collector may (subject to such rules as the Chief Customs-authority may from time to time prescribe) grant a port-clearance to the master when the ship's agent furnishes such security as the Customs-collector deems sufficient for duly delivering, within five days from the date of such grant, the manifest and other documents specified in section 63

CHAPTER VIII

GENERAL PROVISIONS AFFECTING VESSELS IN PORT.

67. The Customs-collector at any customs-port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such port

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs-collector otherwise orders.

68. Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer, and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board

69. Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold and mark any goods before landing, and lock up, seal, mark or otherwise secure any goods on board of such vessel.

¹ For prescribed form issued under this section in Madras, see Mad R. and O.

² For such rules, see Bur R M, in Madras, see Mad R and O

(Chapter VIII.—General Provisions affecting Vessels in Port.)

Power to authorize search and opening of locks.

If any box, place or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs-collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search.

On production of such order, the officer bearing the same may require that any such box, place or closed receptacle be opened in his presence; and, if it be not opened upon his requisition, he may break open the same.

Goods not to be shipped, discharged or water-borne except in presence of officer.

70. Unless with the written permission of the Customs-collector or in accordance with a general permission granted under section 74, no goods other than passengers' baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water-borne to be shipped or discharged from any vessel in any customs-port, except in the presence of an officer of Customs.

Period allowed for discharge and shipment of cargo.

71. When an officer of Customs is deputed under section 67 to remain on board a vessel the tonnage of which does not exceed six hundred tons, a period of thirty working days, reckoned from the date on which he boards such vessel or such additional period as the Customs-collector directs, shall be allowed for the discharge of import-cargo and the shipment of export-cargo on board of such vessel.

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred.

No charge shall be made for the services of a single officer of Customs for such allowed number of working days, or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days.

Consequence of exceeding same.

If the period occupied in the discharge and shipment of cargo be in excess of thirty working days, together with the additional period (if any) allowed under this section, the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period.

Allowance for period during which vessel is laid up.

In calculating any period allowed, or any charge made under this section, the period (if any) during which a vessel, after the completion of the discharge of import-cargo, and before commencing the shipment of export-cargo, is laid up by the withdrawal of the officer of Customs, upon application from the master, shall be deducted.

Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.

72. Except with the written permission of the Customs-collector, no goods, other than passengers' baggage, shall in any customs-port be discharged from any vessel, or be shipped or water-borne to be shipped,—

(a) on any Sunday or on any holiday or day on which the discharge or shipping of cargo, as the case may be, is prohibited by the Chief Customs-authority;

¹ For rules issued under this section in Burma, see Bur. R. M.; in Madras, see Mad. R. and O.

(Chapter VIII —General Provisions affecting Vessels in Port)

(b) on any day, except between such hours as such authority from time to time appoints by notification¹ in the official Gazette.

73. No goods shall in any customs-port be landed at any place other than a wharf or other place² duly appointed for that purpose, and

Goods not to be shipped, etc., except at wharves

unless with the written permission of the Customs-collector, or when a general permission has been granted under section 74, no goods shall in any customs-port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose

74. Notwithstanding anything contained in section 70 or 73, the Chief Customs-authority may, by notification in the official Gazette, give general permission for goods to be shipped or water-borne to be shipped in any customs-port from all or any places not duly appointed⁴ as wharves, and without the presence or authority of an officer of Customs

Power to exempt from sections 70 and 73

75. The Chief Customs-authority may from time to time make rules for the landing and shipping of passengers' baggage and the passing of the same through the custom-house and for the landing, shipping and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular packets and passenger-vessels

Power to make rules regarding baggage and mails

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the [Chief Customs-authority] from time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the custom-house

Landing fees

76. When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boatload or other separate despatch,⁷ a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof

Boat note.

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.

¹ For instance of such notification, see Dom R. and O

² For places appointed for the landing of goods in Burma under this section, see Bur R. M.

³ The word "local" was omitted by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924)

⁴ For order in force under s. 74, see different local rules and orders

⁵ For such rules, see local rules and orders

⁶ These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Customs Act, 1914

⁷ The operation of this s. as it relates to export boat notes has been suspended 1533, Pt I, p. 830.

(Chapter VIII.—General Provisions affecting Vessels in Port.)

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the master of the vessel, or to an officer of the vessel appointed by him to receive it.

The officer of Customs who receives any boat-note of goods landed, and the officer of the Customs, master or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same and note thereon such particulars as the ¹[Chief Customs-officer] may from time to time direct.

The ²[Chief Customs-authority] may from time to time, by notification in the ³* * * official Gazette, suspend the operation of this section in any customs-port or part thereof.

77. All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay.

78. Except in cases of imminent danger, no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs.

79. The ²[Chief Customs-authority] may declare with regard to any customs-port, by notification in the ³* * * official Gazette, that, after a date therein specified, no boat not duly licensed and registered shall be allowed to ply as a cargo-boat for the landing and shipping of merchandise within the limits of such port.

In any port with regard to which such notification has been issued, the Chief Officer of Customs or other officer whom the ²[Chief Customs-authority] appoints in this behalf, may, subject to such ⁴rules and on payment of such fees as the ²[Chief Customs-authority] from time to time prescribes by notification in the ³* * * official Gazette, issue licenses for and register cargo-boats. Such officer may also, subject to rules so prescribed, cancel any license so issued.

80. The Customs-collector may, whenever he thinks fit, require that goods stowed in bulk, and brought by sea or intended for exportation,

¹ These words were substituted for the words "Chief Customs-authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

² These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

³ The word "local" was omitted by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924).

⁴ As to Cargo-boat Rules in force, see different local rules and orders.

Goods
water-borne
to be forth-
with landed
or shipped.

Such goods
not to be
transhipped
without
permission.

Power to
prohibit
plying of
unlicensed
cargo-boats.

Issue of
fees
of registra-
tion of
cargo-boats.

Power to
require goods
to be weighed

(Chapter VIII—General Provisions affecting Vessels in Port Chapter
IX—Of Discharge of Cargo and Entry inwards of Goods)

shall be weighed or measured on board ship before landing or after shipment, and may levy duty according to the result of such weighing or measurement

or measured
on board
before
landing or
after ship
ment

CHAPTER IX

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS

81 When an order for entry inwards of any vessels which has arrived in any Customs port or a special pass permitting such vessel to break bulk has been given, the discharge of the cargo of such vessel may be proceeded with

Discharge of
cargo may
commence on
receipt of du
permissioo

82 Except as otherwise provided in this Act no goods shall be allowed to leave any such vessel unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55

Goods not
to leave
ship unless
entered in
manifest

83 If the owner of any goods (except such as have been shown in the import manifest as not to be landed) does not land such goods within such period as is specified in the bill of lading of such goods, or, if no period is so specified within such number of working days, not exceeding fifteen, after the entry of the vessel importing the same, as the ¹[Chief Customs authority] from time to time appoints by notification in the official Gazette or

Procedure in
respect of
goods not
landed
within time
allowed

if the cargo of any vessel, with the exception of only a small quantity of goods, has been discharged previously to the expiration of the period so specified or appointed, as the case may be—

the master of such vessel or, on his application, the proper officer of Customs, may then carry such goods to the custom house there to remain for entry

The Customs collector shall thereupon take charge of, and grant receipts for, such goods,

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight, prize, general average or other charges of a stated amount, the Customs collector shall hold such goods until he receives notice in writing that the said charges are paid

¹ For notification issued under this section in Madras see Fort St. George's Gazette 1883 Pt. I p. 230 in Bombay see Bom. R. and O.

² These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914)

(Chapter IX.—Of Discharge of Cargo and Entry inwards of Goods.)

Power to
land small
parcels.

84. At any time after the arrival of any vessel the Customs-collector may, with the consent of the master of such vessel, cause any small package or parcel of goods to be carried to the custom-house, there to remain for entry, in charge of the officers of Customs, during the remainder of the working days allowed under this Act for the landing of such package or parcel.

Notice re-
garding un-
claimed
packages.

If any package or parcel so carried to the custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or at the time of the clearance outwards of the vessel from which it was landed, the master may give such notice as is provided in section 83, and the officer in charge of the custom-house shall thereupon hold such package or parcel as provided in that section.

Power to
permit
immediate
discharge.

85. Notwithstanding anything contained in sections 83 and 84, the Customs-collector in any customs-port to which the [Chief Customs-authority] by notification in the ²* * * official Gazette, declares this section to be applicable, may permit the master of any vessel, immediately on receipt of an order under section 57 or a special pass under section 59, to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

- (a) at the custom-house or any specified landing-place or wharf; or
- (b) at any landing-place or wharf belonging to any Port Commissioners, Port Trust or other public body or company.

Any ship's agent so receiving such cargo or portion shall be bound to discharge all claims for damage or short delivery which may be established in respect of the same by the owner thereof, and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or portion has been previously appointed by the owner and such appointment is unrevoked.

The Customs-collector shall take charge of all goods discharged under clause (a) of this section, and otherwise proceed in relation thereto as provided in sections 83 and 88.

A public body or company at whose landing place or wharf any goods are discharged under clause (b) of this section shall not permit the same to be removed without an order in writing from the Customs-collector.

Entry for
home con-
sumption or
warehousing.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home consump-

¹ These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

² See footnote 3, p. 162.

³ For notification declaring the section applicable to the port of—
Calcutta, see Calcutta Gazette, 1904, Pt. I, p. 1121;
Madras, see Fort St. George Gazette, 1885, Pt. I, p. 55;
Bombay, see Bom. R. and O.

(Chapter IX —Of Discharge of Cargo and Entry inwards of Goods)

tion or warehousing by delivering to the Customs collector¹ a bill of entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may from time to time, be prescribed by the [Chief Customs-officer]

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship

87 On the delivery of such bill the duty (if any) leviable on such goods shall be assessed and the owner of such goods may then proceed to clear the same for home consumption or warehouse them subject to the provisions hereinafter contained Assessment of dutiable goods

88 If any goods are not entered and cleared for home consumption, or warehoused within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the local official Gazette be sold by public auction and the proceeds thereof shall be applied first to the payment of freight, primage and general average if the goods are held by the Customs collector subject to such charges under notice given under section 83, 84 or 85, next to the payment of the duties which would be leviable on such goods if they were then cleared for home consumption, and next to the payment of the other charges (if any) payable to the Customs collector in respect of the same Procedure in case of goods not cleared or warehoused within four months after entry of vessel

The surplus if any shall be paid to the owner of the goods on his application for the same provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period

If any goods of which the Customs collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs collector may at any time direct the sale thereof, and shall apply the proceeds in like manner Power to direct sale of perishable goods

Provided that where any goods liable to be sold under this section are arms, ammunition or military stores they may be sold or otherwise disposed of at such place (whether within or without British India) and in such manner as [the Chief Customs-authority may, with the concurrence of the Local Government, direct] Proviso.

Provided also that nothing in this section shall authorize the removal for home consumption of any dutiable goods without payment of duties of customs thereon

¹ For forms of bill of entry prescribed for use in—
Burma see Bur R M. Burma Gazette 1906 Pt 4 p. 555
Madras see Port St George Gazette 1903 Pt I p. 836

² These words were substituted for the words "Chief Customs authority" by s 2 and Part I of the Schedules of the Decentralization Act 1914 (4 of 1914)

³ These words were substituted for the words "the Local Government may from time to time direct" by s 4 and Sch. of the Central Board of Revenue Act 1924 (4 of 1924)

(Chapter X.—Of Clearance of Goods for Home Consumption. Chapter XI.—Warehousing.)

CHAPTER X.

OF CLEARANCE OF GOODS FOR HOME CONSUMPTION.

Clearance for
home con-
sumption.

89. When the owner of any goods entered for home consumption, and (if such goods be liable to duty) assessed under section 87, has paid the import-duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs-officer may make an order clearing the same: and such order shall be sufficient authority for the removal of such goods by the owner.

CHAPTER XI.

WAREHOUSING.

Of the Admission of Goods into a Warehouse.

Application
to warehouse.

90. When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act.

Form of
application.

91. Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs-authority.¹

Warehousing
bond.

92. When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods,—

- (a) to observe all rules prescribed by this Act in respect of such goods;
- (b) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate² not exceeding six per cent. per annum as is for the time being fixed by the Chief Customs-authority; and
- (c) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Form of
bond.

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority,

and shall relate to the cargo or portion of the cargo of one vessel only.

¹ For bill of entry for bond prescribed for Burma, see *Burma Gazette*, 1906, Pt. IV, p. 588; for Madras, see *Fort St. George Gazette*, 1883, Pt. I, p. 837.

² For such rate of interest, see *Fort St. George Gazette*, 1890, Pt. II, p. 1082.

(Chapter XI—Warehousing)

93 When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited

Forwarding of goods to warehouse

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder the marks numbers and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited

94 On receipt of the goods the pass shall be examined by the warehouse keeper and shall be returned to the Customs collector

Receipt of goods at warehouse

No package butt cask or hogsheaf shall be admitted into any warehouse unless it bear the marks and numbers specified in and otherwise correspond with, the pass for its admission

If the goods be found to correspond with the pass the warehouse-keeper shall certify to that effect on the pass and the warehousing of such goods shall be deemed to have been completed

If the goods do not so correspond the fact shall be reported by the warehouse keeper for the orders of the Customs-collector, and the goods shall either be returned to the custom house in charge of an officer of Customs or left in deposit pending such orders as the warehouse keeper deems most convenient

If the quantity or value of any goods has been erroneously stated in the bill of entry, the error may be rectified at any time before the warehousing of the goods is completed, and not subsequently

95 Except as provided in section 100 all goods shall be warehoused in the packages, butts, casks or hogsheafs in which they have been imported

Goods how warehoused

96 Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods

Warrant to be given when goods are warehoused

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement, and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same

Form of warrant

The '[Chief Customs authority] may, by notification in the official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption

¹ These words were substituted for the words "Local Government" by s 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914)

² The word "local" was omitted by s 4 and Schedule of the Central Board of Revenue Act 1921 (1 of 1921)

(Chapter XI.—Warehousing.)

Rules relating to Goods in a Warehouse.

Access of
Customs
officer to pri-
vate ware-
house.

97. The Customs-collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

Power to
cause pack-
ages lodged
in warehouse
to be opened
and exam-
ined.

98. The Customs-collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed or otherwise examined; and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit.

When any goods have been so sealed and marked after examination, they shall not be again opened without the permission of the Customs-collector; and, when any such goods have been opened with such permission, the packages shall, if he thinks fit, be again sealed or marked as before.

Access of
owners to
warehoused
goods.

99. Any owner of goods lodged in a warehouse shall, at any time within the hours of business, have access to his goods in presence of an officer of Customs, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-collector, be deputed to accompany such owner.

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs-collector so require, be paid by such owner to the Customs-collector, and such sum shall, if the Customs-collector so direct, be paid in advance.

Owner's
power to deal
with ware-
housed goods.

100. With the sanction of the Customs-collector, and after such notice given, and under such rules² and conditions as the Chief Customs authority from time to time prescribes, any owner of goods may, either before or after warehousing the same,—

(a) sort, separate, pack and repack the goods, and make such alterations therein as may be necessary for the preservation, sale, shipment or disposal thereof (such goods to be repacked in the packages in which they were imported, or in such other packages as the Customs-collector permits);

(b) fill up any casks of wine, spirit or beer from any casks of the same secured in the same warehouse;

¹ For scale of fees to be levied on oil delivered from the Budge-Budge warehouse, see Ben. R. and O.

For scale of fees for Preventive officers appointed to the charge of private bonded warehouses, see Bur. R. M.

² For such rules, see different local Rules and Orders.

(Chapter XI —Warehousing.)

- (c) mix any wines or spirit of the same sort secured in the same warehouse, erasing from the cask all import brands, unless the whole of the wine or spirit so mixed be of the same brand;
- (d) hottle-off wine or spirit from any casks;
- (e) take such samples of goods as may be allowed by the Customs-collector with or without entry for home consumption, and with or without payment of duty, except such as may eventually become payable on a deficiency of the original quantity.

After any such goods have been so separated and repacked in proper or approved packages, the Customs-collector may, at the request of the owner of such goods, cause or permit any refuse, damaged or surplus goods remaining after such separation or repacking (or, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon.

101. If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the [Chief Customs-officer]¹ may fix.²

Payment of
rent and
warehouse
dues.

A table of the rates of rent and warehouse-dues so fixed shall be placed in a conspicuous part of such warehouse

If any bill for rent or warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Customs-collector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select.

Out of the proceeds of such sale, the Customs-collector shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods:

Provided that the application for such surplus be made within one year from the date of the sale of the goods or that sufficient cause be shown for not making it within such period

102. No warehoused goods shall be taken out of any warehouse, except on clearance for home consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

Goods not to
be taken out
of warehouse,
except as
provided by
this Act

¹These words were substituted by * 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914)

²For fixing rent in certain places in Burma, see Bur. R. M.; for Karachi, see Bom. R. and O., for bonding salt at Kidderpore and Salkia public salt goles, see Calcutta Gazette, 1909, Pt. I, p. 942

(Chapter XI.—Warehousing.)

Period for which goods may remain warehoused under bond.

103. Any goods warehoused may be left in the warehouse, in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of three years after the date of the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home consumption or shipment in manner hereinafter provided:

Goods in private warehouse on cancellation of license.

Provided that when the license for any private warehouse is cancelled, and the Customs-collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall in manner hereinafter provided, and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home consumption or shipment.

Of the Removal of Goods from one Warehouse to another.

Power to remove goods from one warehouse to another in same port.

104. Any owner of goods warehoused under this Act may, at any time within three years from the date of the bond executed in respect of such goods under section 92, and with the permission of the Chief Customs-officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same port.

When any owner desires so to remove any goods, he shall apply for permission to do so in such form as the ¹[Chief Customs-officer] from time to time prescribes.

Power to remove goods from one port to another.

²105. Any owner of goods warehoused at any warehousing port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing port.

Procedure.

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-officer, stating the particulars of the goods to be removed, and the name of the port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form, as the ¹[Chief Customs-officer] from time to time prescribes.

Transmission of account of goods to officers at port of destination.

³106. When permission is granted for the removal of any goods from one warehousing port to another under section 105, an account containing the particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination;

¹ These words were substituted for the words "Chief Customs-authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

² For rules under this section for Bengal as to the removal of non-duty paid salt made in conjunction with ss. 9 and 130, see *Ben. R. and O.*

³ For the form of bond prescribed under this section, see *Fort St. George Gazette*, 1883, Pt. I, p. 838.

(Chapter XI.—Warehousing.)

and the person requiring the removal shall before such removal enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port of destination within such time, as the ¹[Chief Customs-officer] directs. Bond for due arrival and re-warehousing.

Such bond may be taken by the proper officer either at the port of removal or at the port of destination as best suits the convenience of the owner.

If such bond is taken at the port of destination, a certificate thereof, signed by the proper officer of such port, shall, at the time of the removal of such goods, be produced to the proper officer at the port of removal; and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re-warehoused at the port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer; nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid.

107. The ¹[Chief Customs-officer] may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties, in such amount, and under such conditions, as the ¹[Chief Customs-officer] approves, for the removal, from time to time, of any goods from one warehouse to another, either in the same or in a different port, and for the due arrival and re-warehousing of such goods at the port of destination within such time as such [officer]² directs. Remover may enter into a general bond.

108. Upon the arrival of warehoused goods at the port of destination, they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof, and under the laws and rules, in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods. Goods on arrival at port of destination to be subject to same laws as goods on first importation.

109. Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary, continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing port. Bond under section 92 to continue in force notwithstanding removal.

Clearance for Home Consumption or Shipment.

110. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of Clearance of bonded goods for home consumption.

¹ These words were in Part I of the S.

² This word was substituted for the word "authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (1 of 1914).

³ For scale of fees to be levied on oil delivered from the Budge-Budge warehouse, see Ben. R. and O.

(Chapter XI.—Warehousing.)

such goods, clear such goods for home consumption by paying (a) the duty assessed on such goods under section 87, or, where the duty on such goods is altered under the provisions hereinafter contained, such altered duty; and (b) all rent, penalties, interest and other charges payable to the Customs-collector in respect of such goods.

Clearance of same for shipment to foreign port.

111. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for shipment to a foreign port on payment of all rent, penalties, interest and other charges payable as aforesaid and without payment of import-duty on the same:

Provided that the Governor General in Council may prohibit the shipment for exportation to any specified foreign port of warehoused goods in respect of which payment of drawback or transshipment has been prohibited under section 49 or 134 respectively.

Clearance of same for shipment as provisions, etc., on vessel proceeding to foreign ports.

112. Provisions and stores warehoused at the time of importation may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a foreign port.

Form of application for clearance of goods.

113. Application to clear goods from any warehouse for home consumption or for shipment shall be made in such form as the ¹[Chief Customs-officer] from time to time prescribes.²

Application, when to be made.

Such application shall ordinarily be made to the Customs-collector at least twenty-four hours before it is intended so to clear such goods.

Re-assessment of warehoused goods when damaged.

114. If any goods upon which duties are leviable *ad valorem* or on a tariff valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehousing.

Re-assessment on alteration of duty or tariff valuation.

115. If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods or in the tariff valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with ³[such alteration].

¹ These words were substituted for the words "Chief Customs-authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

² For bill of entry form prescribed for Burma, see *Burma Gazette*, 1906, Pt. IV, p. 589; for Madras, see *Fort St. George Gazette*, 1883, Pt. I, p. 839.

³ These words were substituted for the words "the second proviso to s. 37" by s. 2 of the Sea Customs Act (1878) Amendment Act, 1889 (8 of 1889).

(Chapter XI.—Warehousing.)

116. If it appear at the time of clearing any wine, spirit, beer or salt from any warehouse for home consumption that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon, as follows (namely):—

- (a) upon wine, spirit¹ and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to time, be prescribed in this behalf by the ²[Chief Customs-authority] and notified in the official Gazette:

For any time not exceeding	6 months,	2½ per cent.
exceeding 6 months and not exceeding 12	"	5 "
" 12 "	" 18 "	7½ "
" 18 "	" 2 years,	10 "
" 2 years	" 3 "	12 "

- (b) in the case of ³salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs-duties:
- (c) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the ²[Chief Customs-authority] and notified in the ⁴official Gazette.

117. When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage, the ⁵[Chief Customs-officer] may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116

Of the Forfeiture and Discharge of the Bond.

118. If any warehoused goods are removed from the warehouse in contravention of section 102; or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse; or

If goods are improperly removed from warehouses or allowed to remain beyond time

¹ As to spirit wastage allowed in Madras, see Fort St. George Gazette, 1897, Pt. I, p. 766.

² These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

³ As to salt wastage allowed in—

(1) Burma, see Bur. R. M.

(2) Madras, see Mad. R. and O.

⁴ The word "local" was omitted by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924).

⁵ These words were substituted for the words "Chief Customs-authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

(Chapter XI.—Warehousing.)

fixed
or lost or de-
stroyed,
or taken as
samples,
Collector may
demand
duty, etc.

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home consumption or shipment, or removed under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs-collector; or

if any such goods have been taken under section 100 as samples without payment of duty,

the Customs-collector may thereupon demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalties, interest and other charges payable to the Customs-collector on account of the same.

Procedure
on failure to
pay duty,
etc.

119. If any owner fails to pay any sum so demanded, the Customs-collector may forthwith either proceed upon the bond executed under section 92, or cause such portion as he thinks fit of the goods (if any) in the warehouse on account of which the amount is due, to be detained with a view to the recovery of the demand;

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette.

The net proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods: Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-collector from proceeding against such goods in the manner above provided, for any amount due thereon.

Noting re-
moval of
goods.

120. When any warehoused goods are taken out of any warehouse, the Customs-collector shall cause the fact to be noted on the back of the bond.

Every note so made shall specify the quantity and description of such goods, the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping bill under which they have been taken away if removed for exportation by sea or of the bill of entry if removed for home consumption and the amount of duty paid (if any).

Register of
bonds.

121. A register shall be kept of all bonds entered into for customs-duties on warehoused goods, and entry shall be made in such register of all particulars required by section 120 to be specified.

(Chapter XI.—Warehousing.)

When such register shows that the whole of the goods covered by any bond have been cleared for home consumption or shipment, or otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the Customs-collector shall cancel such bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or who is entitled to receive it

Cancellation and return of bond;

Miscellaneous

122. If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home consumption are lost or destroyed by unavoidable accident or delay, the [Chief Customs-officer] may in [his]² discretion remit the duties due thereon.

Power to remit duties on warehoused goods lost or destroyed

Provided that, if any such goods be so lost or destroyed in a private warehouse, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction

123. The warehouse-keeper in respect of goods lodged in a public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall be responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight or gauge reported by the Customs-house-officer who has assessed such goods, allowance being made, if necessary, for ullage and wastage as provided in sections 116 and 117

Responsibility of warehouse-keeper

Provided that no owner of goods shall be entitled to claim from the Customs-collector, or from any keeper of a public warehouse, compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs

Compensation for loss or injury.

124. Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Chief Officer of Customs

A Public warehouse to be locked.

125. The [Chief Customs-officer]³ may from time to time determine in what division of any public warehouse, and in what manner, and on what terms, any goods may be deposited, and what sort of goods may be deposited in any such warehouse.

Power to decide where goods may be deposited in public warehouse, and on what terms.

126. The expenses of carriage, packing and stowage of goods on their reception into or removal from a public warehouse shall, if paid by the

Expenses of carriage, packing, etc., to be borne by owners.

¹ These words were substituted for the words "Chief Customs-authority" by s 2 and Part I of the Schedule of the Decentralization Act, 1914 (1 of 1914)

² This word was substituted for the word "its" by s 2 and Part I of the Schedule, *ibid*

³ These words were substituted for the words "Chief Customs-authority or such officer of Customs as such authority from time to time appoints in this behalf" by s 2 and Part I of the Schedule, *ibid*.

(Chapter XI.—Warehousing. Chapter XII.—Transshipment.)

Customs-collector or by the warehouse-keeper, be chargeable on the goods and be defrayed by, and recoverable from, the owner, in the manner provided in section 119.

Bengal
Bonded
Warehouse
Association.

127. All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods.

CHAPTER XII.

TRANSHIPMENT.

Power to
permit trans-
shipment
without pay-
ment of duty.

128. In the ports of Calcutta, Madras, Bombay, Karwar, Karachi, Aden, Rangoon, Maulmain, Akyab, Chittagong and such other ports as the ¹[Chief Customs-authority] may from time to time, by notification in the ²[³ official Gazette] direct⁴ in this behalf, the Customs-collector may, on application by the owner of any goods imported into such port, and specially and distinctly manifested at the time of importation as for transshipment to some other customs or foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port of transshipment, and without any security or bond for the due arrival and entry of the goods at the port of destination.

In any customs-port other than a port in which the preceding clause may for the time being be in force, the Customs-collector may, on application by the owner of any goods so imported and manifested, grant leave for transshipment without payment of the duty (if any) leviable at such port: Provided that, where the goods so transhipped are dutiable, and are to be removed to some other customs-port, the applicant shall enter into a bond,⁵ with such security as may be required of him, in a sum equal at least to the duty chargeable on such goods, for the due arrival and entry thereof at the port of destination within such time as such Customs-collector directs.

Superintend-
ence of trans-
shipment.

129. An officer of Customs shall, in every case, be deputed free of charge to superintend the removal of transhipped goods from vessel to vessel.

¹ These words were substituted by s. 4 and Schedule of the Central Board of Revenue Act, 1924 (4 of 1924), for the words "Local Government";

² These words were substituted for the words "Gazette of India" by s. 4 and Schedule, Act 4 of 1924.

³ The word "local" was omitted by s. 4 and Sch., *ibid*.

⁴ For notification adding Negapatam to the above list of ports, see Gazette of India, 1901, Pt. I, p. 31.

⁵ For form of such bond, see Fort St. George Gazette, 1883, Pt. I, p. 839.

(Chapter XII.—Transshipment.)

130. The powers conferred on the Customs-collector by section 128 shall be exercised, and the transshipment shall be performed, subject to such rules as may from time to time be made by the ²[Chief Customs-authority].

Subsidiary rules as to transshipment

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the ²[Chief Customs-authority] may in each case appoint in this behalf.

131. All goods transhipped under the second clause of section 128 for removal to a customs-port shall, on their arrival at such port, be entered in like manner as goods are entered on the first importation thereof, and under the laws and rules, in so far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods

Entry and warehousing on arrival of goods transhipped under section 128, clause 2.

132. If two or more vessels belonging wholly or in part to the same owner be at any customs-port at the same time, any provisions and stores in use or ordinarily shipped for use on board may, at the discretion of the Customs-collector, be transhipped from one such vessel to any other such vessel without payment of import-duty.

Transhipment of provisions and stores from one vessel to another of same owner without payment of duty

133. ³A transshipment-fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each bale or package, or according to weight, measurement, quantity or number, and under such rules, as ⁴[the Chief Customs-authority] may from time to time, by notification in the ⁵official Gazette, prescribe for each port

Levy of transshipment fee.

134. The Governor General in Council may from time to time, by notification in the Gazette of India, prohibit, at any specified port, or at all ports, the transshipment of any specified class of goods, generally or when destined for any specified ports, or prescribe any special mode of transhipping any specified class of goods

Power to prohibit transshipment.

135. Except as provided in this Act, no goods shall be transhipped at any port or place in British India.

No goods to be transhipped except as provided.

¹For rules for the transshipment of goods in port, see different local rules and orders

²These words are substituted by s. 2 of the Local Government Act, 1914 (4 of 1914)

Part I of the Local Government Act, 1914 (4 of 1914)

³For the ports and places, see Ben. R. and O., (2) Bombay and O.; (3) Madras, see Fort St. George Gazette, 1879, Pt. 1, p. 933, *ibid*, 1901, Pt. 1, p. 137, and (4) Burma ports, see Bur. R. M.

⁴These words were substituted by s. 4 and Schedule of the Central Board of Revenue Act, 1924 (4 of 1924), for the words "the Local Government, subject to the control of the Governor General in Council"

⁵The word "local" was omitted by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924)

(Chapter XIII.—*Exportation or Shipment and Re-landing.*)

CHAPTER XIII.

EXPORTATION OR SHIPMENT AND RE-LANDING.

No goods to
be shipped,
etc., till
entry out-
wards of
vessel.

136. Except with the written permission of the Customs-collector, no goods other than passengers' baggage, or ballast urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a customs-port until an order has been obtained under section 61 for entry outwards of such vessel.

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained.

Clearance for
shipment.

137. ¹* * * * no goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation until—

(a) the owner has delivered to the Customs-collector, or other proper officer,² a shipping bill of such goods in duplicate, in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the ³[Chief Customs-officer;]

(b) such owner has paid the duties (if any) payable on such goods; and

(c) such bill has been passed by the Customs-collector:

⁴[Provided that the Chief Customs-officer may, in the case of any customs-port or wharf, by notification in the local official Gazette, and subject to such restrictions and conditions, if any, as he thinks fit, exempt goods or any specified goods or class of goods or any specified person or class of persons, from all or any of the provisions of this section.]

Bond re-
quired in
certain cases
before ex-
portation.

138. Before any warehoused goods or goods subject to excise-duties, or goods entitled to drawback of customs-duties on exportation, or goods exportable only under particular rules or restrictions, are permitted to be exported, the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the

¹ The words "Unless the Chief Customs-officer shall, in the case of any customs-port or wharf, or of any class of goods, otherwise direct by notification in the local official Gazette" were repealed by s. 5 (1) of the Sea Customs (Amendment) Act, 1914 (12 of 1914).

² As to rule in force in the Port of Bombay and in Sindh, in regard to shipment on incomplete bills, see Bom. R. and O.

For forms of shipping-bills prescribed in Burma for free and dutiable goods, see Bur. R. M.; Burma Gazette, 1906, Pt. IV, p. 587; in Madras, see Fort St. George Gazette, 1883, Pt. I, p. 840; in Bombay, see Bombay Government Gazette, 1912, Pt. I, p. 1350.

³ These words were substituted for the words "Chief Customs-authority" by s. 2 and Schedule Part I of the Decentralization Act, 1914 (4 of 1914).

⁴ This proviso was added by s. 5 (2) of the Sea Customs (Amendment) Act, 1914 (12 of 1914).

⁵ For rules for the export of salt to British Indian ports, see Mad. R. and O.

(Chapter XIII.—Exportation or Shipment and Re-landing.)

Customs-collector directs, with one sufficient surety, that such goods shall be duly shipped, exported and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer.

139. When goods are cleared for shipment on a shipping bill presented after port-clearance has been granted, the Customs-collector may, if he thinks fit, levy, in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

Additional charge on goods cleared for shipment after port-clearance granted.

(a) in the case of goods liable to duties on fixed tariff-valuations, one per cent. on the tariff-value;

(b) in the case of all other goods, one per cent. on the market-value.

Nothing in this section shall apply to any shipment of treasure or opium.

140. If any goods mentioned in a shipping bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the port, give information of such short-shipment or re-landing to the Customs-collector.

Notice of non shipment or re-landing, and return of duty thereon.

Upon an application being made to the Customs-collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid: *Provided that no such refund shall be allowed unless information has been given as above required.*

141. If, after having cleared from any customs-port, any vessel, without having discharged her cargo, returns to such port, or puts into any other customs-port, any owner of goods in such vessel, if he desires to land or tranship the same or any portion thereof for re-export, may, with the consent of the master, apply to the Customs-collector in that behalf.

Goods re-landed or transhipped from a vessel returning to port, or putting into another port.

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re-landing or transhipment.

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place appointed by the Customs-collector, or are transhipped under such custody.

All expenses attending such custody shall be borne by the owner.

¹ For rules for the adjustment and payment of refunds on short-shipment issued under this section, see Bur. R. M.

(Chapter XIII.—*Exportation or Shipment and Re-landing.* Chapter XIV.—*Spirit.*)

Vessel re-
turning to
port may
enter and
land goods
under im-
port-rules.

142. In either of the cases mentioned in section 141, the master of the vessel may enter such vessel inwards, and any owner of goods therein may, with the consent of the master, land the same under the rules herein contained for the importation of goods.

In every such case, any export-duty levied shall be refunded to, and any amount paid in drawback shall be recovered from, such owner.

Landing of
cargo during
repairs.

143. The Customs-collector may, on application by the master of any vessel which is obliged before completing her voyage to put into any customs-port for repairs, permit him to land the cargo, or any portion thereof, and to place it in the custody of an officer of Customs during such repairs, and to re-ship and export the same free of duty.

All expenses attending such custody shall be borne by the master.

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

Rules for
removal of
spirit from
distillery,
without pay-
ment of duty
for exporta-
tion.

144. The Chief Customs-authority may from time to time make rules¹ prescribing the conditions on which spirit manufactured in British India may be removed from any licensed distillery for exportation without payment of excise-duty.

The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed, or (when such form is inapplicable or insufficient) in such other form as the said Authority from time to time prescribes, conditioned that such duty shall be paid on all such spirit as is—

- (a) not exported within four months from the date of the bond, or
- (b) exported to a customs-port, unless ²[either] the payment of excise-duty as provided by this Chapter in respect thereof at the port of destination ³[or the delivery of the spirit into a warehouse appointed in this behalf by the ⁴[Chief Customs-authority] having authority at that port] is within six months from the date of the bond proved to the satisfaction of the proper officer.

¹ For such rules, see Ben. R. and O.; Mad. R. and O.

² This word was inserted by s. 1 (1) of the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887).

³ These words were inserted by s. 1 (1), *ibid.*

⁴ These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

(Chapter XIV — Spirit)

The Chief Officer of Customs of the port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the period allowed for the exportation of any such spirit, or for the production of such proof that duty has been¹ [so paid or the spirit so delivered]

145 Spirit intended for exportation under bond for the excise-duty shall² [except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed warehouse] be taken from the distillery direct to the custom house, under passes to be granted for that purpose by the officers of Excise

Spirit for export to be taken direct from distillery to Custom house under pass Gauging and proving of spirit

146 Spirit brought to the custom house for exportation under bond for the excise-duty³ [may], previous to shipment, be gauged and proved by an officer of Customs, and the quantity of spirit for which credit is to be given in the settlement of any bond⁴ [may] be determined in the same manner

147 Excise duty shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quantity ascertained by gauging and proof at the custom house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the⁵ [Chief Customs authority] and notified in the⁶ official Gazette

Duty to be recovered on any deficiency in spirit under bond

1882. 148 [Notwithstanding anything in the⁷ Indian Tariff Act, 1882,] spirit exported under bond for excise duty from any customs port to any other customs port shall be charged at the port of importation with excise-duty at the ordinary rate to which the spirit of the like kind and strength is liable at such port

Duty on spirit exported under bond from one Indian port to another

⁸ Provided that the⁹ [Chief Customs authority] may authorize the import of such spirit without the payment of that duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the¹⁰ [Chief Customs authority] in this behalf, and the excise-duty thereon is to be paid on the removal of the spirit from a warehouse so appointed

¹ These words were substituted for the word "paid" by s 1 (2) of the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887)

² These words were inserted by the Excise and Sea Customs Law Amendment Act, 1885 (9 of 1885)

³ The word "may" was substituted for "shall" by s 2 of the Sea Customs Act (1878) Amendment Act 1887 (2 of 1887)

⁴ These words were substituted for the words "Local Government" by s 2 and Part I of the Schedule of the Decentralization Act 1914 (4 of 1914)

The word "local" was omitted by s 4 and Sch of the Central Board of Revenue Act, 1924 (1 of 1924)

⁵ These words were prefixed by s 3 (1) of the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887)

⁶ See now the Indian Tariff Act, 1894 (8 of 1894)

⁷ This proviso was added by s 3 (2) of the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887)

(Chapter XIV.—Spirit.)

Removal for
local con-
sumption of
spirit in-
tended for
exportation.

149. Spirit brought to the custom-house ¹[or to a warehouse licensed under any enactment for the time being in force] for exportation under bond for the excise-duty may, on payment of such duty, be removed for local consumption under passes to be granted for that purpose by the officers of Excise.

Credit for every such payment shall be given in discharge of the bond to which it relates.

Drawback of Excise-duty on Export of Spirit.

Drawback of
excise-duty
on spirit
exported.

²150. A drawback of excise-duty paid on spirit manufactured in British India and exported to any foreign port under the provisions of section 138 shall be allowed by the Customs-collector at the port of exportation:

Provided that the exportation be made within one year from the date of payment of such excise-duty, and that the spirit, when brought to the custom-house, be accompanied by a pass in which such payment is certified.

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs.

Miscellaneous.

Differential
duty to be
levied in
certain cases.

151. ³[Notwithstanding anything in the 'Indian Tariff Act, 1882,] if spirit manufactured in British India upon which excise-duty has been paid is exported from one customs-port to another, and the rate of local excise-duty at the port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon, at such rate as the Local Government at such port may, by notification in the local official Gazette, from time to time prescribe:

⁴[Provided that the ⁵[Chief Customs-authority] may authorize the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the ⁶[Chief Customs-authority] in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed.]

¹ These words were inserted by s. 5 (2) of the Excise and Sea Customs Law Amendment Act, 1885 (9 of 1885).

² As to the application of the provisions of s. 150 to malt liquor, see s. 9 of the Excise (Malt Liquors) Act, 1890 (13 of 1890).

³ These words were prefixed by s. 4 (1) of the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887).

⁴ See now Act 8 of 1894.

⁵ This proviso was added by s. 4 (2) of the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887).

⁶ These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

(Chapter XIV—Spirit Chapter XV—Coasting-trade)

152. Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer

Rum-shrub,
etc., how
charged
with duty.

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor

Provisions
respecting
spirit applied
to such
liquors

153. No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the custom house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo

Conditions
of drawback
and remission
of duty
on spirit

154. No spirit shipped for exportation shall be reloaded without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force

Re-land
of spirit
shipped

155. ¹[When by any law for the time being in force, a special duty is imposed on denatured spirit, the Local Government may, ²[with the previous sanction of the Governor General in Council make rules for ascertaining and determining what spirit imported into British India shall be deemed to be denatured spirit for the purposes of such law, and for causing such spirit to be denatured, if necessary, ³[by officers of Government] at the expense of the person importing the same, before the customs-duties leviable thereon are levied]

Power to
make rules
for ascertain-
ing that im-
ported spirit
has been
rendered
unfit for
human con-
sumption

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs-officer shall decide what spirit is subject only to the said special duty, and such decision shall be final

Decision
where no
rules, or the
applicability
disputed

CHAPTER XV.

COASTING-TRADE

156. Except as hereinafter provided, nothing in Chapters VII, IX, X and sections 136, 139 and 141 to 143 inclusive, of this Act, shall apply to coasting-vessels or to goods imported or exported in such vessels

Chapters
VII, IX, X
and part of
XIII inappli-
cable to
coasting-
trade

¹This paragraph was substituted by s. 6 of the Sea Customs (Amendment) Act, 1914 (12 of 1914)

²These words were added by s. 4 and Sch. of the Central Board of Revenue Act, 1921 (1 of 1921)

³These words were substituted for the words "by its own officers" by s. 4 and Sch., 1917

(Chapter XV.—Coasting-trade.)

157. ¹[The Governor General in Council] may, from time to time, make rules consistent with the provisions of this Chapter—

(a) extending² any provision of the Chapters and sections mentioned in section 156, with or without modification, to any coasting-vessels or to any goods imported or exported in such vessels;

(b) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this Chapter;

³(c) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting-vessel, whether shipped at a foreign port, or at a customs-port, or at a place declared under section 12 to be a port; (2) shipped in a coasting-vessel before all dutiable goods and goods brought in such a vessel from a foreign port have been unladen;

(d) prohibiting the conveyance of any specified class of goods generally, or to or between specified ports in a coasting vessel.

⁴158. Before any coasting-vessel departs from the port of lading, or, when there are more ports of lading than one, the first port of lading, the master shall fill in, sign and deliver to the Customs-collector a manifest in duplicate, containing a true specification of all goods to be carried in such vessel, in such form, and accompanied by such shipping bills or other documents, as may from time to time be prescribed⁵ by the Chief Customs-authority.

If the Customs-collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments; and such manifest shall be the port-clearance of the vessel, unless, under the general orders of the Chief Customs-authority, a separate port-clearance be prescribed.

159. Within twenty-four hours after the arrival of any coasting vessel at any customs-port, whether intermediate or final, and before any goods are there discharged, the manifest, together with the other docu-

¹ These words were substituted for the words "The Local Government" by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924).

² For orders extending certain sections to coasting vessels, see local rules and orders.

³ For rules regulating the coasting trade generally or particularly in respect of a place or articles carried, see local rules and orders.

⁴ For rule for obtaining port clearances by tindals of country coasting vessels, see Bombay Government Gazette, 1884, Pt. I, p. 491.

⁵ For prescribed form of shipping bill in Burma, see Burma Gazette, 1906, Pt. IV, p. 700.

Power to regulate coasting-trade.

Coasting-vessels to deliver manifest and obtain port-clearance before leaving port of lading.

Delivery of manifest, etc., on arrival.

(Chapter XV.—Coasting-trade.)

ments referred to in section 158, shall be delivered to the Customs-collector, who shall note on the manifest the date of delivery.

If the vessel has touched at any foreign port between such port of arrival and her last preceding customs-port of departure, the master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such-port.

If the customs-port of arrival be an intermediate port, and a portion only of the cargo is to be discharged thereat, the master shall likewise so deliver an extract from the manifest signed by him, relating to such portion, and the Customs-collector shall, after verifying such extract, return to him the original manifest and all documents accompanying it except those relating to such portion.

If in any case the cargo actually on board any coasting-vessel on her arrival at any customs-port does not, owing to short-shipment, re-landing or other cause, correspond with the specification thereof in the manifest returned to the master under the second clause of section 158, such master shall, before delivery of such manifest under this section, note thereon the particulars of the difference.

The Customs-collector, when satisfied with the manifest and other documents, shall grant an order to break hulk.

160. Before any coasting-vessel departs from any customs-port at which she has touched during her voyage, the master shall re-deliver the original manifest to the Customs-collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such port. He shall also deliver a duplicate, signed by him, of the specification so subjoined.

If the Customs-collector sees no objection to the departure of the vessel, he shall proceed as prescribed in the second clause of section 158.

161. The Customs-collector may, for sufficient reason, refuse port-clearance to any coasting-vessel declared to be bound to, or about to touch at, any customs-port, unless the owner or master gives a bond, with such security as the Customs-collector deems sufficient, for the production to the Customs-collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs-collector.

Departure
from inter-
mediate port.

Power to
require bond
before port-
clearance is
granted.

¹ For notification issued under this section, see Port St. George Gazette, 1883, Pt. I, p. 842.

(Chapter XV.—Coasting-trade.)

Discharge of cargo.

162. When permission has been granted by the Customs-collector for the discharge of cargo from any coasting-vessel—

(a) if the vessel has not touched at any intermediate foreign port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner without entry thereof at the custom-house and clearance for home consumption, but subject to such general check and control as the ¹[Chief Customs-officer] may from time to time by rules prescribe;

(b) if the vessel has so touched at any such port or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported.

Goods on coasting-vessel, if excisable, not to be unladen without permission.

163. If any of the goods on board of any coasting-vessel be subject to any excise-duty, they shall not be unladen without the permission of the proper officer of Excise.

Grant and revocation of general pass.

164. Notwithstanding anything hereinbefore contained, ²[the Chief Customs-officer may grant or] authorize the Customs-collector to grant a general pass, on any ³conditions which ⁴[the Chief Customs-officer] thinks expedient for the lading and clearance, and for the entry and unloading, of any coasting steam-vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers.

Such pass shall be valid throughout British India, or for such ports only as may be specified therein.

Any such general pass may be revoked by order of ⁵[the Chief Customs-officer] by whom the grant thereof ⁶[was made or authorized]

¹ These words were substituted by s. 2 and Schedule Part I of the Decentralization Act, 1914 (4 of 1914).

² These words were substituted for the words "the Chief Customs-authority may" by s. 2 and Part I of Schedule of the Decentralization Act, 1914 (4 of 1914).

³ For General Pass Rules in force, see local rules and orders.

⁴ These words were substituted for the words "such authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

⁵ These words were substituted for the words "the Chief Customs-authority" by s. 2 and Part I of the Sch., *ibid.*

⁶ These words were substituted for the words "was authorized" by s. 2 and Part I of the Sch., *ibid.*

(Chapter XV.—Coasting-trade.)

by notice in writing under the hand of ¹[the Chief Customs-officer] delivered to the master or to the owner of such steam-vessel, or to any of the crew on board.

165. The Chief Customs-authority may direct that the master of any coasting-vessel which is square-rigged or propelled by steam shall keep, or cause to be kept, a cargo-book, stating the name of the master, the vessel, the port to which she belongs, and the port to which on each voyage she is bound.

Rules respecting cargo-books to be kept by masters of coasting-vessels.

At every port of lading such master shall enter, or cause to be entered, in such book the name of such port and an account of all goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him.

At every port of discharge of any such goods such master shall enter, or cause to be entered, in such book the respective days on which such goods or any of them are delivered out of such vessel.

The respective times of departure from every port of lading, and of arrival at every port of discharge, shall in like manner be duly entered.

Every such master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein.

The Chief Customs-authority may, in the case of any vessel the master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159 and 160.

166. Any duly empowered officer of Customs may go on board of any coasting-vessel in any port or place in British India, and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading, and may demand the production of any document which ought to be on board of any such vessel.

Power to board and examine coasting-vessels.

The Customs-collector may further require that any such document belonging to any coasting-vessel then in port shall be brought to him for inspection.

¹These words were substituted for the words "such authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

(Chapter XVI.—Offences and Penalties.)

CHAPTER XVI.

OFFENCES AND PENALTIES.

Punishments
for offences.

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:—

Offences.	Section of this Act to which offence has reference.	Penalties.
1.—Contravening any rule made under this Act	General .	Penalty not exceeding five hundred rupees.
2.—If any goods be landed or shipped, or if an attempt be made to land or ship any goods, or if any goods be brought into any bay, river, creek or arm of the sea, for the purpose of being landed or shipped, at any port or place which, at the date of such landing, shipment, attempt or bringing, is not a port for the landing and shipment of goods,	11	such goods shall be liable to confiscation.
3.—If any person ship or land goods, or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed, or intended to be shipped or landed, contrary to the provisions of this Act; or if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under ¹ [No. 4] of this section, while such vessel is within any bay, river, creek or arm of the sea which is not a port for the ² [shipment and landing] of goods,	General . 11	such person shall be liable to a penalty not exceeding one thousand rupees.
4.—If any vessel which has been within the limits of any port in British India with cargo on board, be afterwards found in any port, bay, river, creek or arm of the sea in British India, light or in ballast, and if the master be unable to give a due account of the customs-port where such vessel lawfully discharged her cargo,	11	such vessel shall be liable to confiscation.
5.—If any goods are put without the authority of the proper officer of Customs, on board of any tug-steamer or pilot-vessel from any seagoing vessel inward-bound; or	11	such goods shall be liable to confiscation, and the master of every such tug-steamer or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees.

¹ This word and this figure were substituted for the word and figure "No. 2" by s. 2 (2) of the Amending Act, 1891 (12 of 1891).

² These words were substituted for the words "landing or shipment" by s. 2 (2), *ibid*.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
such vessel outward-bound, or if any goods on which drawback has been granted are put, without such authority, on board of any tug steamer or pilot vessel for the purpose of being re landed,	17	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
6.—If any vessel arriving at, or departing from, any customs port fails, when so required	17	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
ing or landing of an officer of Customs,	..	the master of such vessel shall be liable to a penalty not exceeding five hundred rupees and the vessel, if not entered, shall not be allowed to enter until the penalty is paid.
7.—If	17	
officer] under section 17,	18 & 19	such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.
8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from British India contrary to such prohibition or restriction, or	18 & 19	such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.
if any attempt be made so to import or export any such goods, or	18 & 19	such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.
if any such goods be found in any package produced to any officer of Customs as containing no such goods, or	18 & 19	such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.
if any such goods, or any dutiable goods be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in British India, or	18 & 19	such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.
if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction,	18 & 19	such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

¹ These words were substituted for the words "Chief Customs authority" by s. 2 and Part I of the Schedule of the Decentralisation Act, 1914 (4 of 1914).

² See now the Indian Ports Act, 1908 (15 of 1908)

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
9.—If, upon an application to pass any goods through the custom-house, any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner,	General	such person shall be liable to a penalty not exceeding one thousand rupees.
10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any customs-port (not having been duly re-landed or discharged under the provisions of this Act),	42 & 43	such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation ;
11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47 or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs,	44 to 48	and the master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed, or who aids or is concerned in such unshipping or re-landing, shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees.
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such wine, spirit, provisions or stores shall be liable to confiscation.
13.—If, in any river or port wherein a place has been fixed under section 53 by the ¹ [Chief Customs-authority], any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs, or other person duly authorized to receive the same,	53	such goods shall be liable to confiscation.
14.—If the master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	53	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
15.—If, after any vessel arriving has entered any customs-port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	54	such master shall be liable to a penalty not exceeding one thousand rupees.

¹ These words were substituted for the words "Local Government" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

(Chapter XVI.—Offences and Penalties.)

Offences	Section of this Act to which offence has reference.	Penalties
<p>16 —If any manifest delivered under section 53, required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo and voyage, or if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel,</p>	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees
<p>17.—If any goods entered in the import manifest of a vessel are not found on board of the vessel, or custom house,</p>	55 & 64	the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods, if they be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article
<p>18 —If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do, or fails to counter sign the same or to enter thereon the particulars referred to in section 56,</p>	53, 54 & 56	such person shall be liable to a penalty not exceeding five hundred rupees.
<p>19 —If bulk be broken in any vessel previous to the grant by the Customs collector of an order for entry inwards or a special pass permitting bulk to be broken,</p>	57 & 59	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
<p>20 —If any bill or copy has been altered with fraudulent intent; or if the goods mentioned in any such bill or copy have not been <i>bona fide</i> shipped as shown therein; or if any such bill or copy has been altered with fraudulent intent; or if any part of the cargo has been staved, destroyed or thrown overboard; or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs collector,</p>	53	the master of the vessel shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
21.—If any master of a vessel attempts to depart without a port-clearance,	62	such master shall be liable to a penalty not exceeding five hundred rupees.
22.—If any vessel actually departs without a port-clearance,	62	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
23.—If any pilot takes charge of any vessel proceeding to sea, notwithstanding that the master of such vessel does not produce a port-clearance,	62	such pilot, on conviction before a Magistrate, shall be liable to fine not exceeding one thousand rupees.
24.—If any master of a vessel refuses to receive on board an officer of Customs deputed under section 67,	68	such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board; and the vessel, if not entered, shall not be allowed to enter until such penalty is paid.
25.—If any master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board,	68	such master shall, in each such case, be liable to a penalty not exceeding five hundred rupees.
26.—If any master of a vessel refuses to allow such vessel, or any box, place or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search; or if an officer of Customs places any lock, mark or seal upon any goods in a vessel, and such lock, mark or seal is wilfully opened, altered or broken, before due delivery of such goods; or if any such goods are secretly conveyed away; or if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission,	69	the master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees.
27.—If the master of any vessel laid up by the withdrawal of the officer of Customs shall, before application is made by him for an officer of Customs to superintend the receipt of cargo, cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,	70	such master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass, shall be liable to be re-landed for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation.

(Chapter XVI.—Offences and Penalties.)

Offences	Section of this Act to which of fence has reference	Penalties
28 —If any master of a vessel, in any case other than that provided for by No 27, causes or suffers any goods to be discharged, shipped or water borne contrary to any of the provisions of section 70, 72 or 75,	70, 72 & 75	such master shall be liable to a penalty not exceeding one thousand rupees, and all goods so discharged, shipped or water borne shall be liable to confiscation
29 —If, when a boat note is required by section 76, any goods water borne for the purpose of being landed from any vessel, and ware housed or passed for importation, or of being shipped for exportation, be found without such note; or if any goods are found on board any boat in excess of such boat note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel,	76	such goods shall be liable to confiscation; and the person by whose authority the goods are being landed or shipped, and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods
30 —If any person refuses to receive, or fails to sign, or to note the prescribed particulars upon, any boat note, as required by section 76, or if any master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisition,	76	such person, master or officer shall be liable to a penalty not exceeding five hundred rupees
31 —If any goods are, without permission, shipped or water borne to be shipped, or are landed, except from or at a wharf or other place duly appointed for the purpose; or	73	such goods shall be liable to confiscation, and the person by whose authority the goods are shipped, landed, water-borne or transhipped, and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of the duty (if any) leviable on such goods
sel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs collector; or if any goods are transhipped contrary to the provisions of section 78,	78	
32 —If, after the issue of a notification under section 79 with regard to any port, any goods are found within the limits of such port on board of any boat not duly licensed and registered,	79	such goods, unless they are covered by a special permit from the Customs collector, shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees
33.—If any master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel,	55 & 52	such master shall be liable to a penalty not exceeding one thousand rupees

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
34.—If any goods are found concealed in any place, box or closed receptacle in any vessel, and are not duly accounted for to the satisfaction of the officer in charge of the custom-house.	General	such goods shall be liable to confiscation.
35.—If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained,	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs.
36.—If, after any goods have been landed and before they have been passed through the custom-house, the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation; or if the goods cannot be recovered, the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article.
<p>37.—If it be found, when any goods are entered at, or brought to be passed through, a custom-house, either for importation or exportation, that—</p> <p>(a) the packages in which they are contained differ widely from the description given in the bill of entry or application for passing them; or</p> <p>(b) the contents thereof have been wrongly described in such bill or application as regards the denominations, characters or conditions according to which such goods are chargeable with duty, or are being imported or exported; or</p> <p>(c) the contents of such packages have been mis-stated in regard to sort, quality, quantity or value; or</p> <p>(d) goods not stated in the bill of entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs,</p> <p>and such circumstance is not accounted for to the satisfaction of the Customs-collector,</p>	86 & 137	such packages, together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties.
38—If, when goods are passed by tale or by package, any omission or misdescription thereof tending to injure the revenue be discovered,	86 & 94	the person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or misdescription, unless it be proved to the satisfaction of the officer in charge of the custom house that the variance was accidental
39—If, without entry duly made, any goods are taken or passed out of any custom house or wharf,	86	the person so taking or passing such goods shall in every such case be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation
40—If any prohibited or dutiable goods are found, either before or after landing concealed in any passenger's baggage,	General	such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation
41—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care, of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,	93	such goods shall be liable to confiscation and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees.
42—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer,	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation
43—If any warehoused goods be not warehoused in accordance with sections 94 and 95,	94 & 95	such goods shall be liable to confiscation
44—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or, upon demand made by any such officer, refuses access to any such officer,	97	such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his license forthwith cancelled
45—If the keeper of any public warehouse, or the licensee of any private warehouse, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof,	Chap XI	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods,	99	such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.
47.—If any warehoused goods are opened in contravention of the provisions of section 98; or if any alteration be made in such goods or in the packing thereof, except as provided in section 100,	98 & 100	such goods shall be liable to confiscation.
48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under sections 116 and 117,	123	the licensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs-collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient.
49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-collector,	123	such keeper or licensee shall, for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient.
50.—If any goods, after being duly warehoused, are fraudulently concealed in, or removed from the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concealment,	Chap. XI	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.
51.—If any goods lodged in a private warehouse are found to exceed the registered quantity,	Ditto	such excess, unless accounted for to the satisfaction of the officer in charge of the custom-house, shall be charged with five times the ordinary duty thereon.
52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery.	Ditto	such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference	Penalties.
61.—If any person wilfully contravenes any rule relating to spirits made under section 155,	155	such person shall be liable to a penalty not exceeding five hundred rupees; and all such spirit shall be liable to confiscation.
62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting-vessel; or if any such rules be otherwise infringed,	157	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
63.—If, contrary to any such rules, any coasting-vessel touches at any foreign port, or deviates from her voyage, unless forced by unavoidable circumstances; or if the master of any such vessel which has touched at a foreign port fails to declare the same in writing to the Customs-collector at the customs-port at which such vessel afterwards first arrives,	159	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees; and if any goods liable to export-duty have been landed from, or any goods liable to import-duty have been shipped in, such vessel at such foreign port, such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a customs-port to or from a foreign port, as the case may be.
64.—If in the case of any coasting-vessel any of the provisions of section 158, 159 or 160 are not complied with,	158, 159 & 160	the master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees.
65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production,	161	such person shall be bound to pay a penalty equal to double the amount of customs-duties which would have been chargeable on the export-cargo of the vessel had she been declared to be bound to a foreign port.
66.—If the master of any coasting-vessel violates any of the conditions under which a general pass for such vessel has been granted,	164	such master shall be liable to a penalty not exceeding one thousand rupees.
67.—If any master of a coasting-vessel contravenes any of the provisions of section 165,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods; or	165	such package, with its contents, shall be liable to confiscation.

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

The Magistrate or Customs-collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such person; but if otherwise, shall direct that the search be made.

A female shall not be searched by any but a female.

Power to stop vessels, carts, etc., and search for goods on reasonable suspicion.

171. Any duly empowered officer of Customs or other person duly employed for the prevention of smuggling, may stop and search for smuggled goods any vessel, cart or other means of conveyance: provided that he has reason to believe that smuggled goods are contained therein.

Power to issue search-warrants.

172. Any Magistrate may, on application by a Customs-collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods.

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure.¹

Persons reasonably suspected may be arrested.

173. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Persons arrested to be taken to nearest Magistrate or Customs-collector.

174. Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs-collector.

Persons taken before Magistrate may be detained or admitted to bail.

175. When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to gaol or order him to be kept in the custody of the Police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs:

Provided that any person so arrested, committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf.

Person escaping may be afterwards arrested.

176. If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest make his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

¹ See now Act 5 of 1898.

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

177. When any person employed on the crew of any of the ships of Her Majesty's Navy, Indian Marine or Marine Survey, is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law.

Persons in Her Majesty's Navy, when arrested, to be secured on board until warrant procured.

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained.

178. Any things liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Seizure of things liable to confiscation.

179. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorized to receive the same.

Things seized how dealt with.

If there be no such officer at hand, all such things shall be carried to and deposited at the custom-house nearest to the place of seizure.

If there be no custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the [Chief Customs-officer] for the deposit of things so seized.

180. When any things liable to confiscation under this Act are seized by any Police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.

Procedure in respect of things seized on suspicion.

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest custom-house; and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest custom-house, to be there proceeded against according to law.

181. When anything is seized, or any person is arrested under this Act, the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest.

When seizure or arrest is made, reason in writing to be given.

¹ These words were substituted for the words "Chief Customs-authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914).

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

Power to
detain pack-
ages contain-
ing certain
publications
imported into
British India.

¹[181A. (1) The Chief Customs-officer or other officer authorised by the Local Government in this behalf may detain any package, brought whether by land or sea into British India which he suspects to contain—

(a) any newspaper or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document,

XXV of 1907.

containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, and shall forward such package to such officer as the Local Government may appoint in this behalf. XLV of 1900,

(2) Any officer detaining a package under the provisions of sub-section (1) shall, where practicable, forthwith send by post to the addressee or consignee of such package notice of the fact of such detention.

(3) The Local Government shall cause the contents of such package to be examined, and if it appears to the Local Government that the package contains any such newspaper, book or other document, containing any such seditious matter, may pass such orders as to the disposal of the package and its contents as it may deem proper, and, if it does not so appear, shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any package detained under the provisions of this section may, within two months from the date of such detention, apply to the Local Government for release of the same, and the Local Government shall consider such application and pass such orders thereon as it may deem to be proper:

Provided, further, that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the package or its contents on the ground that the package did not contain any such newspaper, book or other document containing any such seditious matter.

(4) In this section "document" includes also any painting, drawing or photograph, or other visible representation.]

Procedure for
disposal by
High Court
of applica-
tions for
release of
packages so
detained.

²[181B. Every application under the second proviso to sub-section (3) of section 181A shall be heard and determined, in the manner provided by sections 99D to 99F of the Code of Criminal Procedure, 1898, by a Special Bench of the High Court constituted in the manner provided by section 99C of that Code.] v of 1899,

¹ Section 181A was inserted by s. 4 and Schedule II of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

² Section 181B was inserted by s. 4 and Schedule II, *ibid*.

(Chapter XVII — Procedure relating to Offences, Appeals, etc.)

¹[181C. No order passed or action taken under section 181A shall be called in question in any Court otherwise than in accordance with the second proviso to sub section (3) of that section] Jury action barred

²182 In every case, except the cases mentioned in section 167 Nos 26, 72 and 74 to 76, both inclusive in which, under this Act any- thing is liable to confiscation or to increased rates of duty Adjudication of confiscations and penalties

or any person is liable to a penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

(a) without limit by a Deputy Commissioner or Deputy Collector of Customs or a Customs collector

(b) up to confiscation of goods not exceeding two hundred and fifty rupees in value and imposition of penalty or increased duty not exceeding one hundred rupees by an Assistant Commissioner or Assistant Collector of Customs

(c) up to confiscation of goods not exceeding fifty rupees in value and imposition of penalty or increased duty not exceeding ten rupees by such other subordinate officers of Customs as the ³[Chief Customs authority] may, from time to time empower in that behalf in virtue of their office

Provided that the ³[Chief Customs authority] may, in the case of any officer performing the duties of a Customs collector limit his power to those indicated in clause (b) or in clause (c) of this section and may confer on any officer, by name or in virtue of his office the powers indicated in clauses (a), (b) or (c) of this section

183 Whenever confiscation is authorized by this Act the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit Option to pay fine in lieu of confiscation

184 When anything is confiscated under section 182 such thing shall thereupon vest in Her Majesty On confiscation property to vest in Her Majesty

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police on the requisition of such officer, shall assist him in taking and holding such possession

185 If any vessel actually departs without a port clearance or after failing to be ag-to when required at any station appointed under section 17, the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs officer of any customs port to which such Level of penalty for failure to bring to

¹ Section 181C was inserted by s 4 and Schedule II of the Press Law Repeal and Amendment Act, 1922 (14 of 1922)

² For notifications issued under this section, see Bombay Government Gazette, 1883 Pt 1 p 1321 Burma Gazette 1908 Pt 1, p 701

³ These words were substituted for the words "Local Government" by s 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914)

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

vessel proceeds, or in which she is, and, in the case of Aden, by such officer as the Governor of Bombay in Council appoints in this behalf.

A certificate of such departure or failure to bring-to when required, purporting to be signed by the Chief Customs-officer of the port from which the vessel is stated to have so departed, shall be *prima facie* proof of the fact so certified.

Penalty under Act not to interfere with punishment under other law.

186. The award of any confiscation, penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

Offences not specially provided for how tried.

187. All offences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate.

Appeal from subordinate to Chief Customs-authority.

188. Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-authority, or, in such cases as ¹[the Governor General in Council] directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by ¹[the Governor General in Council].

Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

Deposit, pending appeal, of duty demanded.

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order.

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

¹ These words were substituted for the words "the Local Government" by s. 4 and Schedule of the Central Board of Revenue Act, 1924 (4 of 1924).

(Chapter XVII—Procedure relating to Offences, Appeals, etc.)

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

190 If upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs-authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods.

Power to remit penalty or confiscation.

191. [The Governor General in Council] may on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs authority, and from which no appeal lies, reverse or modify such decision or order.

Revision by the Governor General in Council.

192 When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid.

Goods on which penalty incurred not to be removed till payment.

If any person has become liable in any such fine, penalty or rate in respect of any goods, the Customs collector may detain any other goods belonging to such person passing through the custom-house until such fine, penalty or rate is paid.

Other goods of person liable to fine or penalty may be detained.

193 When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs.

Enforcement of payment of penalty.

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered, and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

¹ These words were substituted for the words "The Local Government" by a 4 and Schedule of the Central Board of Revenue Act, 1924 (4 of 1924)

CHAPTER XVIII.

MISCELLANEOUS.

Power to
open pack-
ages and ex-
amine goods.

194. Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any customs-port.

Power to take
samples of
goods.

195. ¹(1) The Customs-collector may, on the entry or clearance of any goods or at any time while such goods are being passed through the custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Every such sample shall, if practicable, be at the option of the owner either restored to him, or sold and the proceeds accounted for to him.

²[(2) In the case of goods which consist of drugs or articles intended for consumption as food, and in respect of which the taking of samples for the purposes of this sub-section may have been authorised by general or special order of the Local Government, the Customs-collector may also in like circumstances take samples thereof for submission to, and examination by, such officer of Government or of a local authority as may be specified in such order. The real value of all such samples shall be paid to the owner by the Customs-collector.]

Owner to pay
expense inci-
dental to
compliance
with Cus-
toms-law.

196. The unshipping, carrying, shipping and landing of all goods, and the bringing of them to the proper place for examination or weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted, and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods.

No compen-
sation for loss
or injury ex-
cept on proof
of neglect or
wilful act.

197. No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in any custom-house, or on any custom-house wharf, or under charge of any officer of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs.

Notice of pro-
ceedings.

198. No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof; or

Limitation.

after the expiration of three months from the accrual of such cause.

¹ Renumbered by s. 2 of the Sea Customs (Amendment) Act, 1919 (13 of 1919).

² This sub-section was added by s. 2, *ibid*.

199. The ¹[Chief Customs-officer] may from time to time fix the period after the expiration of which goods left on any custom-house wharf, or other authorized landing-place or part of the custom-house premises, shall be subject to payment of fees and the amount of such fees.² Wharfage-fees.

200. A duplicate of any certificate, manifest, bill or other custom-house document may, on payment of a fee not exceeding ten rupees be furnished, at the discretion of the Customs-collector to any person applying for the same, if the Customs-collector is satisfied that no fraud has been committed or is intended by the applicant. Duplicates of documents may be granted on payment of fee.

201. Except in the cases provided for by sections 36, 55, 63 and 91, the Customs-collector may in his discretion, upon payment of one rupee, authorize any document, after it has been entered and recorded in the custom-house, to be amended. Amendment of documents.

202. No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage shall so act in any custom-house unless such authorization is approved by the Customs-collector. Custom-house agents.

Such officer may require any person so authorized to give a bond with sufficient security in any sum not exceeding five thousand rupees for his faithful behaviour as regards the custom-house regulations and officers.

Such officer may, in case of misbehaviour of the person so authorized, suspend or withdraw such approval, but an appeal against every such suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal.

203. When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of the production of such authority may refuse such permission. Agent to produce authority if required.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom-house on behalf of such person

¹ These words were substituted for the words "Chief Customs authority" by s. 2 and Part I of the Schedule of the Decentralization Act, 1914 (4 of 1914)

² For orders fixing such fees in—

(1) Bombay, see Bom R. and O.
(2) Madras, see Mad R. and O.

(Chapter XVIII.—Miscellaneous.)

or firm: Provided that the Customs-collector may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs-collector as empowered to transact such business, and deposits with the Customs-collector an authority in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

Rules to be notified.

204. All rules¹ made under this Act shall be notified in the official Gazette and shall thereupon have the force of law.

All such rules for the time being in force shall be collected, arranged and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price.

Publication of notifications in local official Gazettes.

205. ²[Any notification published in the Gazette of India by the Chief Customs-authority under section 53, section 74, section 76, section 79, section 85, section 96, section 116, section 128, section 133 or section 147 shall forthwith be re-published in the local official Gazette of each province to which it relates.]

Remission of duty and compensation to owner in certain cases.

206. If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods. For any damage so occasioned by such officer, the ³[Chief Customs-officer, or the Customs-collector with the sanction of the Chief Customs-officer, shall] make due compensation to such owner:

⁴[Provided that compensation exceeding Rs. 250 shall be paid with the sanction of the Chief Customs-authority.]

Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

207. Nothing in this Act shall affect any law⁵ for the time being in force relating to the Commissioners for making improvements in the Port of Calcutta or the Trustees of the Port of Bombay ⁶[or any like body hereafter created for any other port].

¹ For such rules, see local Customs Manuals.

² This section was repealed, but was afterwards added by s. 4 and Schedule of the Central Board of Revenue Act, 1924 (4 of 1924).

³ These words were substituted by Schedule, Part I, of the Decentralization Act, 1914 (4 of 1914).

⁴ This proviso was added by s. 2 and Sch., Part I, *ibid*.

⁵ See the Madras Port Trust Act, 1905 (Mad. Act 2 of 1905); the Bombay Port Trust Act, 1879 (Bom. Act 6 of 1879); the Karachi Port Trust Act, 1886 (Bom. Act 6 of 1886); and the Aden Port Trust Act, 1888 (Bom. Act 5 of 1888), Bom. Code. the Chittagong Port Act, 1914 (Ben. Act 5 of 1914), Ben. Code. the Calcutta Port Act, 1890 (Ben. Act 3 of 1890), Ben. Code; and the Rangoon Port Act, 1905 (Bur. Act 4 of 1905), Bur. Code.

⁶ These words were substituted for the word "respectively" by s. 6 of the Excise and Sea Customs Law Amendment Act, 1885 (9 of 1885).

(Schedule.—Part I. Part II.)

SCHEDULE.

PART I.

Acts of the Governor General of India in Council

Number and year	Title	Extent of repeal.
XXI of 1856 . . .	An Act to consolidate and amend the law relating to the Abkari Revenue in the Presidency of Fort William in Bengal.	Section 8 Sections 10 to 15, both inclusive, the last sentence of section 16 and the form of bond annexed to the Act
VI of 1863 . . .	An Act to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India	The whole
X of 1868 . . .	An Act to amend the Consolidated Customs Act	The whole
XVII of 1869 . . .	An Act to shorten the time for landing cargo	The whole
XIV of 1871 . . .	An Act for the further amendment of the Consolidated Customs Act	The whole
VI of 1873 . . .	An Act to amend the law relating to the transhipment of goods imported by steamer, and for other purposes	The whole
XVI of 1875 . . .	An Act to amend the law relating to Customs duties, and for other purposes.	Sections 6, 6, 7 and 12

PART II.

FORMS.

A

FORM OF BOND FOR IMPORT-DUTY.

(See section 92.)

BOND.

No. 18 .

We, A. B.,

now of
, and C. D.,

of the same place, are jointly and severally bound to Her

(Schedule.—Part II.)

Majesty's Secretary of State for India in Council in the sum of Government rupees , to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives.

(date)

(Signed) ()

The above bounden having applied to the officer in charge of the Custom-house at for and obtained permission to lodge in the warehouse for a period of the following goods, that is to say— imported by sea from on board of the ship and entered in the Custom-house Books as No. of the Register of Goods imported by sea;

The condition of this Bond is that;

If the , or their legal representatives, shall observe all the rules prescribed in the Sea Customs Act, 1878, to be observed by owners of goods warehoused, and by persons obtaining permission to warehouse goods under the provisions thereof;

And if the said , or their legal representatives, shall pay to the officer in charge of the Custom-house at the port of

all dues, whether customs-duties, warehouse-dues, rent or other lawful charges which shall be demandable on the said goods, or on account of penalties incurred in respect to them, within from the date of this Bond, or within such further time as the Chief Customs-authority of shall allow in that behalf, together with interest on every such sum at the rate of six per cent. per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house;

And if, within the term so fixed or enlarged, the said goods, or any portion thereof, having been removed from the said warehouse for home consumption or re-exportation by sea, the full amount of all customs-duties, warehouse-dues, rent and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods;

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force.

(date)

(Signed) ()

(Schedule.—Part II.)

B

FORM OF BONDED WAREHOUSE WARRANT.

(See section 96.)

I do hereby certify that _____ have deposited
 in the warehouse of _____ the undermentioned goods
 _____, which goods, the _____ engage on demand, after payment
 of rent and incidental charges and Government dues or customs charge-
 able thereon, to deliver to the said _____ or their
 assigns, or to the holder of this warrant to whom it may be transferred by
 endorsement.

C

FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A
LICENSED DISTILLERY

(See sections 144 and 152.)

We,

are jointly and severally bound to Her Majesty's Secretary of
 State for India in Council in the sum of Government rupees _____ to be
 paid to the said Secretary of State in Council, for which payment we
 jointly and severally bind ourselves and our legal representatives

Dated this _____ day of _____ 18 _____

(Signed) (_____)

The above bounden _____ being indebted to Her
 Majesty's Secretary of State for India in Council in the sum of Govern-
 ment rupees _____, being the amount of duty payable at the rate of rupees _____
 per imperial gallon London proof, for _____ gallons of _____ (or
 for _____ gallons of proof spirit used in the preparation of
 dozens of bottles, or _____ gallons of cordials and liquors, as specified in
 the annexed schedule) manufactured at _____ which the said
 _____ have been allowed to remove thence for exportation by sea
 subject to the provisions of the Sea Customs Act, 1878, without having
 paid such duty.

The condition of this obligation is that, if the above bounden
 _____, or their legal representatives, shall, at the expiration of four
 calendar months from the date of this obligation, pay or cause to be paid
 to the said Secretary of State in Council duty at the rate of _____ rupees
 per imperial gallon of proof spirit for all or any portion of the above-
 mentioned _____ which shall not have been then exported by sea
 to a foreign port subject to the aforesaid provisions (of which exportation,
 if any, due proof shall be given), or passed for local consumption on pay-

Sea Customs.
(*Schedule.—Part II.*)

[1878: Act VIII.]

Arms.

[1878: Act XI.]

ment of duty, then this bond shall be void; otherwise the same shall remain in full force.

Signed in the presence of

Place

Date

If the bond be for cordials and other liquors under section 152, add—

Schedule.

Description of cordial and liquors.	Quantity in bottles or gallons.	Quantity of proof spirit.
1	2	3

THE INDIAN ARMS ACT, 1878.

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTIONS.

1. Short title.
Local extent.
Savings.
2. Commencement.
3. Repeal of enactments.
4. Interpretation-clause.

II.—Manufacture, Conversion and Sale.

5. Unlicensed manufacture, conversion and sale prohibited.

III.—Import, Export and Transport.

6. Unlicensed importation and exportation prohibited.
Importation and exportation of arms and ammunition for private use.
7. Sanction of Local Government required to warehousing of arms, etc.
8. [*Repealed.*]
9. [*Repealed.*]

SECTIONS

- 10 Power to prohibit transport
Transshipment of arms
- 11 Power to establish searching stations
- 12 Arrest of persons conveying arms, etc , under suspicious circumstances
Procedure where arrest made by person not Magistrate or Police-officer

IV—Going armed and possessing Arms, etc

- 13 Prohibition of going armed without license
- 14 Unlicensed possession of fire arms, etc
- 15 Possession of arms of any description without license prohibited in certain places
- 16 In certain cases arms to be deposited at police-stations or with licensed dealers

V—Licenses

- 17 Power to make rules as to licenses
- 18 Cancelling and suspension of license

VI—Penalties

- 19 For breach of sections 5, 6, 10, 13 to 17
- 20 For secret breaches of sections 5, 6, 10, 14 and 15
For concealing arms, etc
- 21 For breach of license
- 22 For knowingly purchasing arms, etc , from unlicensed person
For delivering arms, etc , to person not authorised to possess them
- 23 Penalty for breach of rule
- 24 Power to confiscate

VII—Miscellaneous

- 25 Search and seizure by Magistrate
- 26 Seizure and detention by Local Government
- 27 Power to exempt
- 28 Information to be given regarding offenders
- 29 Sanction required to certain proceedings under section 19, clause (f)
- 30 Searches in the case of offences against section 19, clause (f), how conducted
- 31 Operation of other laws not barred
- 32 Power to take census of fire arms
- 33 Notice and limitation of proceedings

THE FIRST SCHEDULE —FACTS REPEALED

THE SECOND SCHEDULE [Repealed]

ACT No. XI OF 1878.¹

[15th March 1878.]

An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; It is hereby enacted as follows:—

I.—Preliminary.

Short title
Local extent.

1. This Act may be called the Indian Arms Act, 1878; and it extends to the whole of British India.²

¹ For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 650; for discussions in Council, see *ibid*, 1877, Supplement, pp. 3016 and 3030; *ibid*, 1878, Supplement, pp. 435 and 453.

This Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I (Bur. Code); and in the Santhál Parganas, see the Santhál Parganas Settlement Regulation (3 of 1872) as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3 (B. & O. Code) and in the Arakan Hill District by Regulation 1 of 1916, s. 2, Bur. Code.

It has been extended to the Myelat in the Federated Shan States by s. 10 (1) of the Burma Laws Act, 1898 (13 of 1898), see Notification No. 17, dated 5th March, 1927, Bur. Gazette, 1927, Part I, p. 256.

It has been extended under s. 10 (1) of the Burma Laws Act, 1898 (13 of 1898), to the notified areas of Taunggyi in the State of Yawngphwe, Lashio in the State of North Hsenwi and Loilem in the State of Laikha and to the Civil Station of Loinwe in the State of Kengtung, and under s. 12 (1) (c) of that Act the officers who are to perform the duties of a Magistrate under the Act have been notified, see Burma Gazette, 1908, Pt. I, p. 455.

It has been declared in force except s. 15 in the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), B. and O. Code.

It has been declared by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazáribagh, Lohárdaga and Mánbhum, and in Pargana Dhálbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.

It has been extended to British Baluchistan by notification under sections 5 and 5A of the Scheduled Districts Act, 1874, with certain modifications and exceptions, see p. 97 of the Baluchistan Local Rules and Orders, Edition 1926.

It has been extended to the Pargana of Manpur by the Manpur Laws Regulation, 1926 (2 of 1926).

As to the trial in a Presidency-town of offences against the Act, see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 184.

A license granted under the Indian Explosives Act, 1884 (4 of 1884), for the manufacture, possession, sale, transport or importation of an explosive may be given the effect of a like license granted under the Indian Arms Act, 1878 (11 of 1878), see Act 4 of 1884, s. 15.

As to the possession, manufacture and export of arms, ammunition and gunpowder in the Chittagong Hill Tracts, see the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), ss. 11 and 12, Ben. Code.

Its application to the Pargana of Spiti is barred by s. 14 of the Spiti Regulation, 1873 (1 of 1873). As to Upper Tanawal in the Hazara District, see ss. 3 and 6 (4) of the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N. W. F. Code.

As to further law relating to unlawful manufacture and possession of explosive substances, see the Explosive Substances Act, 1908 (6 of 1908), ss. 4 (b) and 5.

It is in force throughout the province of Assam except the Lushai Hills. see Notification No. 2443-T., dated the 1st June, 1914, Assam Gazette, 1914, Pt. II, p. 843.

² As to definition of "British India," see the General Clauses Act, 1897 (10 of 1897), s. 1 (7).

(I.—Preliminary.)

But nothing herein contained shall apply to—

Savings.

(a) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of the Government, or by a public servant or ¹[a member of either of the forces constituted by the Indian Territorial Force Act, 1920, or the Auxiliary Force Act, 1920] in the course of his duty as such public servant or ²[member]

2. This Act shall come into force on such day³ as the Governor General in Council by notification in the Gazette of India appoints Commencement

3. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published and prescribed under this Act Repeal of enactments.

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively or, where no such period is expressly fixed, for one year from the date³ on which this Act comes into force, and shall then cease to have effect

4. In this Act, unless there be something repugnant in the subject or context,— Interpretation clause.

“cannon” includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same:

“arms” includes fire-arms, bayonets, swords, daggers, spears, spear heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms:

“ammunition” includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofractor and other explosive or fulminating material, gun-flint-

¹ These words were substituted by s. 35 of the Auxiliary Force Act, 1920 (49 of 1920).

² This word was substituted for the word “volunteer” by s. 35 *ibid*

³ The Act came into force on the 1st October 1878—*see* Notification No. 1169, dated 27th June 1878, Gazette of India, 1878, Pt. I, p. 329

(I.—Preliminary. II.—Manufacture, Conversion and Sale. III.—Import, Export and Transport.)

gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre :

“ military stores,” in any section of this Act as applied to any part of British India, means any military stores to which the Governor General in Council may from time to time, by notification in the Gazette of India, specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the Governor General in Council may from time to time so extend such section :

“ license ” means a license granted under this Act, and “ licensed ” means holding such license.

II.—Manufacture, Conversion and Sale.

Unlicensed
manufacture,
conversion
and sale pro-
hibited.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same ; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address.

III.—Import, Export and Transport.

Unlicensed
importation
and export-
ation prohi-
bited.

6. No person shall bring or take by sea or by land into or out of British India any arms, ammunition or military stores except under a license and in the manner and to the extent permitted by such license.

Importation
and export-
ation of
arms and
ammunition
for private
use.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition ; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of and brought into British India within the meaning of this section.

(III—Import, Export and Transport)

7 Notwithstanding anything contained in the Sea Customs Act, 1878, no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government Sanction of Local Government required to warehouse of arms, etc

8. [Levy of duties on arms, etc, imported by sea] Rep by the Repealing and Amending Act, 1891 (XII of 1891)

9 [Power to impose duty on import by land] Rep by the Repealing and Amending Act, 1891 (XII of 1891)

10. The Governor General in Council may, from time to time, by notification in the Gazette of India,— Power to prohibit transport

- (a) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent in the manner permitted by such license, and

(b) cancel any such notification

Explanation—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section Transshipment of arms

11. The Local Government, with the previous sanction of the Governor General in Council, may, at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office Power to establish searching stations

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him Arrest of persons conveying arms, etc, under suspicious circumstances

Any person so apprehended, and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police officer, shall be delivered over as soon as possible to a Police officer Procedure where arrest made by person not Magistrate or Police Officer

All persons apprehended by, or delivered to, a Police officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate

(IV.—Going armed and possessing Arms, etc.)

IV.—Going armed and possessing Arms, etc.

Prohibition
of going
armed with-
out license.

13. No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office.

Unlicensed
possession of:
fire-arms, etc.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.

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Possession of
arms of any
description
without
license
prohibited in
certain
places.

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860³ applies at the time this Act comes into force or to which the Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette specially extend this section,⁴ no person shall have in his possession any arms of any description, except under a license and in the manner and to the extent permitted thereby.

In certain
cases arms to
be deposited
at police-
stations or
with
licensed
dealers.

⁵[16. (1) Any person possessing arms, ammunition or military stores the possession whereof has, in consequence of the cancellation or expiry of a license or of an exemption or by the issue of a notification under section 15 or otherwise, become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police-station or, at his option and subject to such conditions as the Local Government may by rule prescribe, with a licensed dealer.

(2) When arms, ammunition or military stores have been deposited under sub-section (1) or, before the first day of January, 1920, under the provisions of any law for the time being in force, the depositor shall,

¹ For notification appointing all headmen and rural police men under s. 5 of the Burma Village Act, 1907, to disarm unlicensed persons, see *Burma Gazette* 1909, Pt. I, p. 602.

² The last three paras. of s. 14 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

³ Act 31 of 1860 was repealed by s. 3 of this Act.

⁴ Section 15 has been especially extended to:—

(1) Aden, see *Bombay R. and O.*, Vol. I.

(2) Other places in Bombay, see *ibid.*

(3) Places in Madras, see *Mad. R. and O.*, Vol. I.

(4) Places in the Punjab, see *Punjab Gazette*, 1899, Pt. I, p. 285; *ibid.*, 1900, Pt. I, p. 810.

(5) Places in the U. P., see *U. P. R. & O.*, Vol. I.

(6) Places in Assam, see *Assam Gazette*, Extra., dated 23rd March, 1923.

⁵ This section was substituted by s. 2 of the Indian Arms (Amendment) Act, 1919 (20 of 1919).

(IV —Going armed and possessing Arms, etc V —Licenses)

at any time before the expiry of such period as the Local Government may by rule prescribe be entitled—

- (a) to receive back any thing so deposited the possession of which by him has become lawful, and
- (b) to dispose or authorize the disposal of any thing so deposited by sale or otherwise to any person whose possession of the same would be lawful and to receive the proceeds of any such sale

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of any thing the confiscation of which has been directed under section 24

(3) All things deposited as aforesaid and not returned or disposed of under sub-section (2) within the prescribed period therein referred to shall be forfeited to His Majesty

(4) (a) The Local Government may make rules consistent with this Act for carrying into effect the provisions of this section

(b) In particular and without prejudice to the generality of the foregoing provision the Local Government may by rule prescribe—

- (i) the conditions subject to which arms, ammunition and military stores may be deposited with a licensed dealer, and
- (ii) the period after the expiry of which things deposited as aforesaid shall be forfeited under sub-section (3)]

V —Licenses

17 The Governor General in Council may from time to time, by notification in the Gazette of India make rules to determine the officers by whom the form in which and the terms and conditions¹ on and subject to which, any license shall be granted and may by such rules among other matters—

Power to
make rules as
to licenses

- (a) fix the period for which such license shall continue in force
- (b) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32 clause 2 of Act No XXXI of 1860² applies at the time this Act comes into force or in respect of any such license other than a license for possession granted in any other place,
- (c) direct that the holder of any such license other than a license for possession shall keep a record or account in such form

¹ For Rules as to licenses see the Indian Arms Rules 1904 Genl R & O, Vol II

² Act 31 of 1860 was repealed by s. 3 of this Act

(V.—*Licenses.* VI.—*Penalties.*)

as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so;

- (d) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6;
- (e) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered; and
- (f) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

Cancelling
and suspen-
sion of
license.

18. Any license may be cancelled or suspended—

- (a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district, or Commissioner of Police in a presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license; or
- (b) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

VI.—*Penalties.*

19. Whoever commits any of the following offences (namely):—

- (a) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5;
- (b) fails to give notice as required by the same section;

For breach of
sections 5, 6,
10, 13 to 17.

¹ Offences under this section are bailable, see Schedule II, Code of Criminal Procedure, 1898 (Act 5 of 1898).

(VI —Penalties)

- (c) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6,
- (d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10,
- (e) goes armed in contravention of the provisions of section 13,
- (f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15,
- (g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep,
- (h) intentionally fails to exhibit anything which, by a rule made under section 17, clause (e), he is required to exhibit, or
- (i) fails to deposit arms ammunition or military stores as required by section 14 or section 16,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both

20 Whoever does any act mentioned in clause (a), (c), (d) or (f) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the servant of any public carrier,

For secret breaches of sections 5, 6, 10, 14 and 15,

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores,

For conceal ing arms, et

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both

21 Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

For breach of license

22 Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to section 5 to sell the same, or

For knowingly purchasing arms, etc., from unlicensed person or delivering arms etc., to person not authorized to possess them.

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same,

(VI.—Penalties. VII.—Miscellaneous.)

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for
breach of
rule.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Power to
confiscate.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated.

VII.—Miscellaneous.

Search and
seizure by
Magistrate.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered¹ in this behalf by name or in virtue of his office by the Local Government.

Seizure and
detention by
Local
Government.

26. The Local Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

¹ For notification empowering Deputy Superintendents of Police in Burma to conduct searches, see *Burma Gazette*, 1909, Pt. I, p. 602.

(VII.—Miscellaneous.)

27. The Governor General in Council may from time to time, by notification¹ published in the Gazette of India,—

Power to exempt

(a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act, and

(b) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction²

28. Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and

Information to be given regarding offences

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms ammunition or military stores in respect of which an offence against this Act has been or is being committed

29. Where an offence punishable under section 19, clause (f), has been committed within three months from the date³ on which this Act comes into force in any province, district or place to which section 32, clause 2, of Act XXXI of 1860⁴ applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency-town, of the Commissioner of Police

Sanction required to certain proceedings under section 19, clause (f).

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates Act, 1877,⁵ in the course of any proceedings instituted in respect of an offence punishable under section

Searches in the case of offences against section 19, clause (f) how conducted

¹ For exemptions and withdrawals under s. 27 (a), see rule 3 and Schedules 1 to IV of the Indian Arms Rules, 1921, Gen. R. and O., Vol. II

² For order exempting residents of Pondicherry, being Europeans, from payment of Import duty on guns, when holding passports from their own authorities, see Notification No. 2237, Gazette of India, 1879, Pt. I, p. 782

³ For notification declaring arms, etc., brought into an Indian port and declared under manifest to be consignments without transshipment to any port on the seaboard of the Persian Gulf, to be liable to the prohibitions and directions contained in s. 6 see No. 902 P., dated 27th April 1901, Gazette of India, 1901, Pt. I, p. 296. As to exemption of small parcels under certain conditions of arms, etc., exported under license and in transit at an intermediate port, see *ibid.*

⁴ The 1st October 1878

⁵ Act 31 of 1860 was repealed by s. 3 of this Act

⁶ For the references to Act 10 of 1872 and the Presidency Magistrates Act, 1877 (1 of 1877), read now Act 5 of 1893

(VII.—Miscellaneous. *The First Schedule.*)

19, clause (f), such search shall, notwithstanding anything contained in the said Code or Act, be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

Operation of
other laws
not barred.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

Power to
take census
of fire-arms.

32. The Local Government may from time to time, by ²notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Notice and
limitation of
proceedings.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Number and year.	Title.	Extent of repeal.
XVIII of 1841	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.

¹ For officers appointed under this section in Burma, see *Burma Gazette*, 1909, Pt. I, p. 602.

² For notification under this section by Chief Commissioner of Coorg, see *Coorg District Gazette*, 1910, Pt. I, p. 13.

(The First Schedule. The Second Schedule.)

1879: Act VI.] *Elephants' Preservation.*

Number and year	Title	Extent of repeal
XXX of 1854	An Act to provide for the levy of duties of Customs in the Arracan, Pegu, Martahan and Tenasserim Provinces	In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into foreign States should be prohibited" Section 11 ¹
XXXI of 1860	An Act relating to the manufacture, importation and sale of Arms and Ammunition and for regulating the right to keep and use the same, and to give power of disarming in certain cases	So much as has not been repealed.
VI of 1866	An Act to continue Act No XXXI of 1860 (relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes	The whole
III of 1872	The Santhal Parganas Settlement Regulation	So much of the schedule ² as relates to Act XXXI of 1860 and Act VI of 1866
IX of 1874	<i>The Arakan Hills District Laws Regulation, 1874</i>	So much of the schedule as relates to Act XVIII of 1841
XV of 1874	An Act for declaring the local extent of certain enactments and for other purposes	So much of the first schedule as relates to Act XVIII of 1841

THE SECOND SCHEDULE

ARMS, ETC., LIABLE TO DUTY

[Rep by the Repealing and Amending Act, 1891 (XII of 1891)]

ACT No. VI of 1879.³

[22nd March 1879]

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows.— Preamble.

1. This Act may be called the Elephants' Preservation Act, 1879: Short title¹ The rest of Act 30 of 1854 was repealed by s. 5 of the Upper Burma Laws Act, 1880 (20 of 1880)² A new schedule has since been substituted for the schedule here mentioned—
B & O Code³ This Regulation has since been repealed by Regulation 1 of 1916, Bur. Code.
⁴ *Supra*⁵ For the Statement of Objects and Reasons, see Gazette of India, 1878, Pt. V, p. 197, for the Preliminary Report of the Select Committee, see *ibid* Pt. V, p. 387, for discussions in Council, see *ibid*, 1878, Supplement, pp. 1103, 1855; and *ibid*, 1879, Supplement, pp. 348, 350

Local extent. It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg;

and the Local Government may,² * * * * * extend it to any other local area³ by notification in the local official Gazette.

**Commence-
ment.**

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April 1879.

Repeal.

2. The words "kills or catches elephants," in section 25, clause (i), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (j), of the same Act, shall be repealed in every local area to which this Act extends or is extended.

**Killing and
capture of
wild ele-
phants pro-
hibited.**

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(a) in defence of himself or some other person;

(b) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(c) as permitted by a license granted under this Act.

¹ For the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh, now read Governor of the United Provinces of Agra and Oudh. The Central Provinces and Burma are now under the administration of their respective Governors.

² The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

³ For places to which the Act has been extended; see different local Rules and Orders.

The Act has been extended to the following places, namely:—

Kila Sukindah, in Cuttack, see Calcutta Gazette, 1882, Pt. I, p. 278;

the District of Mymensingh, see Calcutta Gazette, 1883, Pt. I, p. 416;

the District of Midnapur, see Ben. R. and O.;

the Districts of Kámrup, Darrang, Naugong, Sibságar, Lakhimpur, Cachar, the Nágá Hills and the Khási and Jaintiá Hills, see Assam Gazette, 1880, p. 340;

the Gáro Hills (with the exception of certain portions of the estates of the zamindár of Bijni), see Assam Gazette, 1899, Pt. II, p. 431;

the Eastern Dvárs in the district of Goálpára, and that part of the District of Sylhet which has not been permanently settled, see Assam Gazette, 1883, Pt. I, p. 2; the Makokehang Sub-division of the Nágá Hills District, see Notification No. 168-J., printed, Assam Gazette, 1891, Pt. II, p. 36; the Lushai Hills, see Gazette of India, 1898, Pt. II, p. 345, Notification No. 923-P., dated April 4, 1898;

the whole of Upper Burma, except the Katha and Bhamo Districts and the Shan States, Bur. R. M.; and to the Katha and Bhamo Districts of the Mandalay Division, see Burma Gazette, 1902, Pt. I, p. 520.

It has been extended under the Burma Laws Act, 1898 (13 of 1898), s. 10, to the Shan States of Mōng Mít with its dependency Mōng Lang, see Burma Gazette, 1903, Pt. I, p. 889; and it has been declared under s. 3 (2) of the Kachin Hills Tribes Regulation, 1895 (Reg. I of 1895), to be applicable to members of all hill tribes in the hill tracts within the limits of the said State: *ibid.*

It has been declared in force in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (Reg. I of 1900), Ben. Code, and in the Arakan Hill District by Reg. I of 1916, s. 2.

[4. Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government]

Rights of Government with respect to certain elephants and tusks

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district

License to kill and capture wild elephants

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof

* 6 The Local Government may from time to time¹ * * * declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

* Power of Local Government to declare what are main roads and canals and to make rules as to licenses

make rules consistent with this Act for regulating—

- (a) the grant and renewal of licenses under this Act,
- (b) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal
- (c) the time during which such licenses shall continue in force, and
- (d) the conditions (if any) on which they shall be granted

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law

7. Whoever, in contravention of section 3, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned,

Penalty for contravening section 3

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate

8 Any officer of Revenue or Police, or any Forest officer, who may find any person killing, injuring or capturing, or attempting to kill,

License to be produced and shown on

¹ This section was substituted by the Elephants' Preservation Act (1879) Amendment Act 1923 (2 of 1923)

² For rules under this section, see different local Rules and Orders

³ The words "subject to the control of the Governor General in Council" were repealed by s. 2 and Schedule I of the Devolution Act, 1920 (33 of 1920)

requisition
of certain
officers.

injure or capture, any wild elephant, except in the cases mentioned in section 3, clauses (a) and (b), may require him to produce and show a license granted to him under this Act.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

Limitation of
prosecution.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Recovery of
fees.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

THE LEGAL PRACTITIONERS ACT, 1879.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
Local extent.
 2. Repeal of enactments.
Saving of rules, etc.
References to repealed enactments.
 3. Interpretation-clause.
-

CHAPTER II

OF ADVOCATES, VAKILS AND ATTORNEYS.

4. Advocates and Vakils.
5. Attorneys of High Court.

CHAPTER III

OF PLEADERS AND MUKHTARS

SECTIONS

- 6 Power to make rules as to qualifications, etc., of pleaders and mukhtars
Publication of rules
 - 7 Certificates to pleaders and mukhtars
 - 8 Pleadors on enrolment may practise in Courts and revenue offices
 - 9 Mukhtars on enrolment may practise in Courts
 - 10 No person to practise as pleader or mukhtar unless qualified
Revenue agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869
 - 11 Power to declare functions of mukhtars
 - 12 Suspension and dismissal of pleaders and mukhtars convicted of criminal offence
 - 13 Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct
 - 14 Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office
Suspension pending investigation
 - 15 Power to call for record in case of acquittal under section 14
 - 16 Power to make rules for mukhtars on appellate side of High Court
-

CHAPTER IV

OF REVENUE AGENTS

- 17 Power to make rules as to qualifications, etc., of revenue agents
Publication of rules
- 18 Certificates to revenue agents
- 19 Enrolment of revenue agent
- 20 No person to act as agent in revenue-offices unless qualified
- 21 Dismissal of revenue-agent convicted of criminal offence
- 22 Suspension and dismissal of revenue-agents guilty of unprofessional conduct
- 23 Procedure when revenue agent is so charged in subordinate office
- 24 Power to Chief Controlling Revenue authority to call for record

CHAPTER V.

OF CERTIFICATES.

SECTIONS.

25. Fee for certificates.

26. Dismissed practitioners to surrender certificates.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

27. High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue proceedings.

Exception as to agents mentioned in section 20.

28. [*Repealed.*]

29. [*Repealed.*]

30. [*Repealed.*]

31. [*Repealed.*]

CHAPTER VII.

PENALTIES.

32. On persons illegally practising as pleaders, mukhtárs or revenue-agents.

33. On suspended or dismissed pleader, etc., failing to deliver certificate.

34. On suspended or dismissed practitioner practising during suspension or after dismissal.

35. Revision of fines.

36. Power to frame and publish lists of touts.

CHAPTER VIII.

MISCELLANEOUS.

37. Local Government to appoint examiners.

38. Exemption of High Court practitioners from certain parts of Act.

(Chapter I—Preliminary)

SECTIONS

- 39 Suspension or dismissal of person holding mukhtar and revenue-agent's certificates
 40 Pleaders etc not to be suspended or dismissed without being heard
 41 Power for certain High Courts to enrol advocates
 42 Repeal of Ch VI of Bom Reg II of 1827 and Acts I of 1846 and XX of 1853

THE FIRST SCHEDULE—ENACTMENTS REPEALED

THE SECOND SCHEDULE—VALUE OF STAMPS FOR CERTIFICATES

ACT No XVIII of 1879¹

[29th October 1879]

An Act to consolidate and amend the law relating to Legal Practitioners

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal the North-Western Provinces the Punjab Oudh the Central Provinces and Assam and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

1 This Act may be called the Legal Practitioners Act, 1879 and shall come into force on the first day of January 1880

This section and section 2 extend to the whole of British India

The rest of this Act extends in the first instance only to the territories respectively administered by the Lieutenant Governors of the Lower Provinces of Bengal the North Western Provinces and the

¹ For the Statement of Objects and Reasons, see Gazette of India, 1878 Pt. V, p. 391, for the Reports of the Select Committee see *ibid* 1879 Pt. V, pp. 51 and 841 for Proceedings in Council see *ibid* 1878 Supplement pp. 1653 and 1693 *ibid*, 1879 Supplement pp. 79 1066 and 1375

This Act has been declared in force by notification under s. 3 (a) of the Scheduled Districts Act 1874 (14 of 1874) in the Districts of Haridwar, Lohardaga and Manbhum and Pargana Dibrugarh and the Kailash in the District of Singbhum see Gazette of India 1881 Pt. I, p. 504 The District of Lohardaga (now called the Ranchi District Calcutta Gazette 1899 Pt. I, p. 44) included at this time the District of Palamau which was separated in 1894

The whole Act except section 36 as substituted by section 4 of Act 11 of 1896 is repealed in the North West Frontier Province by the N. W. F. Province Law and Justice Regulation 1901 (Reg. 7 of 1901) s. 5 Sch. III P and N. W. F. Code

Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam.¹ But any other Local Government may from time to time, by notification in the official Gazette, extend² all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

Repeal of enactments.

2. On and from the first day of January 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Saving of rules, etc.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

References to repealed enactments.

All references made to any enactment hereby repealed in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

“ Judge ” means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

“ subordinate Court ” means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850³ or Act No. XI of 1865⁴ :

¹ For the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh, now read Governor of the United Provinces of Agra and Oudh. Each of the other provinces mentioned in this section is now under the administration of a Governor.

² Under this power, the Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April 1882, *see* Fort St. George Gazette, 1881, Pt. I, pp. 491 and 707. Ss. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency, *see* Bombay Government Gazette, 1885, Pt. I, p. 290. Sections 13 [except clauses (a), (b), (c), (d) and (f) thereof], 34, 36 and 40 have been extended to the whole of the Bombay Presidency, except the Province of Sindh (Bombay Gazette, 1904, Pt. I, p. 1635), and to the Province of Sindh (*Ibid*, 1905, Pt. I, p. 634).

Ch. I, s. 40, Sch. II, and so much of Chs. III, V, VI and VII as relates to pleaders, have been extended to Coorg, *see* Mysore Gazette, 1879, Pt. I, p. 355; *see* also Notification, No. 8, dated 30th January, 1891, Coorg District Gazette, 1891, Pt. I, p. 140, extending sections 4, 5 and 38; *see* also Notification No. 64, dated 11th November, 1899, Coorg District Gazette, 1899, Pt. I, p. 122, extending sections 3, 13 and 36 as amended by Act XI of 1896 so far as they relate to pleaders.

S. 3 and Chs. II, III, V to VIII and the second schedule were extended to Lower Burma with effect from 16th April 1900; *see* Burma Gazette, 1900, Pt. I, p. 320, Bur. R. M.; Burma Gazette, 1908, Pt. I, p. 18 (extending s. 20).

Sections 4 and 41 were extended to Ajmer-Merwara by Chief Commissioner's Notification No. 28-C. C., dated 21st April, 1927, *see* Gazette of India, 1927, Part II-A, p. 214.

³ *See* now the Presidency Small Cause Courts Act, 1882 (15 of 1882).

⁴ *See* now the Provincial Small Cause Courts Act, 1887 (9 of 1887).

(Chapter I—Preliminary Chapter II—Of Advocates, Vakils and Attorneys)

“revenue office” includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents

“legal practitioner” means an advocate, vakil or attorney of any High Court a pleader, mukhtar or revenue agent

1[“tout” means a person—

- (a) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business, or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business, or
- (b) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue offices or railway stations, landing stages lodging places or other places of public resort]

CHAPTER II

OF ADVOCATES VAKILS AND ATTORNEYS

4 Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the letters patent constituting such Court, or ^{Advocates and Vakils} 2[under section 41 of this Act], 3[or enrolled as a pleader in the Chief Court of the Punjab under section 8 of this Act] shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue agents and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall notwithstanding anything herein contained, be entitled, as such, to practise in

¹ This definition was substituted by s. 2 of the Legal Practitioners (Amendment) Act, 1926 (15 of 1926)

² These words and figures were substituted for the words “as an advocate on the roll of the Chief Court of the Punjab” by s. 2 of the Legal Practitioners Act, 1884 (9 of 1884)

³ These words were inserted by s. 2 (a) of the Legal Practitioners (Amendment) Act, 1903 (1 of 1903)

(Chapter II.—Of Advocates, Vakils and Attorneys. Chapter III.—Of Pleaders and Mukhtars.)

any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any revenue-office:

Provided that no such vakil ¹[or pleader] shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

Attorneys of
High Court.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue-office.

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an attorney so practising.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

6. The High Court may, from time to time, make rules² consistent with this Act as to the following matters (namely):—

Power to
make rules
as to qualifi-
cations, etc.,
of pleaders
and mukh-
tars.

- (a) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court;
- (b) the qualifications, admission and certificates of proper persons to be mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court;
- (c) the fees to be paid for the examination and admission of such persons; and
- (d) suspension and dismissal of such pleaders and mukhtars.

¹ These words were added by s. 2 (b) of the Legal Practitioners (Amendment) Act, 1908 (1 of 1908).

² For rules made under this section, see different local Rules and Orders.

(Chapter III —Of Pleaders and Mukhtars)

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government. Publication of rules

7 On the admission, under section 6, of any person as a pleader or mukhtar, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts and, in the case of a pleader, also the revenue offices specified therein. Certificate to pleaders and mukhtars

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

[Provided that, on the admission as a pleader of any person who has been previously entered as a vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorizing him to practise permanently in the Courts and in the revenue offices specified therein, and a certificate so issued shall not require to be renewed under this section.]

8 Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue authority may from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly and thereupon he may appear pleader and act in such Courts or offices and in any Court or revenue office subordinate thereto. Provision as to enrolment in Courts and revenue offices

¹ For rules regarding renewal of certificates see Section 10 of the Legal Practitioners Act, 1908 (1 of 1908).
² This proviso was added by s. 3 of the Legal Practitioners (Amendment) Act, 1908 (11 of 1908).

(Chapter III.—Of Pleaders and Mukhtars.)

Mukhtárs on enrolment may practise in Courts.

9. Every mukhtár holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a mukhtár in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure¹) appear, plead and act in any such Criminal Court and any Court subordinate thereto.

No person to practise as pleader or mukhtár unless qualified.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate:

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

Provided that persons who have been admitted as Revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869² (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Power to declare functions of mukhtárs.

11. Notwithstanding anything contained in the Code of Civil Procedure,³ the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

Suspension and dismissal of pleaders and mukhtárs convicted of criminal offence.

12. The High Court may suspend or dismiss any pleader or mukhtár holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or mukhtár, as the case may be.

Suspension and dismissal of pleaders and mukhtárs guilty of unprofessional conduct.

⁴[13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtár holding a certificate as aforesaid—

(a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is

¹ See now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

² See now the Bengal Tenancy Act (8 of 1885), Ben. Code.

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

⁴ This section was substituted for the original section by s. 2 of the Legal Practitioners Act, 1896 (11 of 1896).

(Chapter III —Of Pleaders and Mukhtars.)

the recognized agent of such party within the meaning of the Code of Civil Procedure,¹ or some servant, relative or friend authorized by the party to give such instructions, or

- (b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (c) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader or mukhtár, or
- (d) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader or mukhtár through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (f) for any other reasonable cause]

14. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue office.

Such copy and notice shall be served upon the pleader or mukhtár at least fifteen days before the day so appointed

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtár, and shall proceed to adjudge on the charge

If such officer finds the charge established and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the pleader or mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, ²[any Judge of a Court of Small Causes of a Presidency-town,]

Suspension pending investigation.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908)

² These words were inserted by s. 4 of the Legal Practitioners Act, 1884 (1884)

Mukhtars on enrolment may practise in Courts.

9. Every mukhtár holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a mukhtár in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure¹) appear, plead and act in any such Criminal Court and any Court subordinate thereto.

No person to practise as pleader or mukhtár unless qualified.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate:

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

Provided that persons who have been admitted as Revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869² (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Power to declare functions of mukhtars.

11. Notwithstanding anything contained in the Code of Civil Procedure,³ the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of mukhtars practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.

12. The High Court may suspend or dismiss any pleader or mukhtár holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or mukhtár, as the case may be.

Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

⁴[13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtár holding a certificate as aforesaid—

(a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is

¹ See now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

² See now the Bengal Tenancy Act (8 of 1885), Ben. Code.

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

⁴ This section was substituted for the original section by s. 2 of the Legal Practitioners Act, 1896 (11 of 1896).

(Chapter III.—Of Pleaders and Mukhtars.)

the recognized agent of such party within the meaning of the Codo of Civil Procedure,¹ or some servant, relative or friend authorized by the party to give such instructions, or

- (b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (c) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader or mukhtár, or
- (d) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader or mukhtár through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (f) for any other reasonable cause.]

14. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

Such copy and notice shall be served upon the pleader or mukhtár at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the pleader or mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, ²[any Judge of a Court of Small Causes of a Presidency-town,]

Suspension pending investigation.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² These words were inserted by s. 4 of the Legal Practitioners Act, 1884 (9 of 1884).

any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtár charged before him or it under this section.

Every report made to the High Court under this section shall—

- (a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;
- (b) when made by a Magistrate subordinate to the Magistrate of the District,¹ be made through the Magistrate of the District¹ and the Sessions Judge;
- (c) when made by the Magistrate of the District,¹ be made through the Sessions Judge;
- (d) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-authority, be made through such Revenue-authorities as the Chief Controlling Revenue-authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

Power to call
for record
in case of
acquittal
under section
14.

15. The High Court, in any case in which a pleader or mukhtár has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to
make rules
for mukhtárs
on appellate
side of High
Court.

16. Notwithstanding anything contained in any letters patent or in the Code of Civil Procedure,² section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely):—

- (a) the qualifications and admission of proper persons to be mukhtárs practising on the appellate side of such Court;
- (b) the fees to be paid for the examination and admission of such persons;
- (c) the security which they may be required to give for their honesty and good conduct;
- (d) the suspension and dismissal of such mukhtárs; and
- (e) declaring what shall be deemed to be their functions, powers and duties;

¹ To be read as "District Magistrate," see s. 3 (2) of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Chapter III —Of Pleaders and Mukhtars Chapter IV —Of Revenue agents)

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees, and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction

CHAPTER IV

OF REVENUE AGENTS

17 The Chief Controlling Revenue authority may, from time to time, make rules¹ consistent with this Act as to the following matters (namely) —

Power to make rules as to qualifications etc of revenue agents

- (a) the qualifications, admission and certificates of proper persons to be revenue agents,
- (b) the fees to be paid for the examination and admission of such persons,
- (c) the suspension and dismissal of such revenue agents, and
- (d) declaring what shall be deemed to be their functions powers and duties

All such rules shall be published in the local official Gazette and shall thereupon have the force of law

Publication of rules

18 On the admission of any person as a revenue agent under section 17, the Chief Controlling Revenue authority shall cause a certificate signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue offices as may be specified therein

Certificate to revenue agents

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue authority, or by any other officer authorized by such Authority in that behalf

On every such renewal, the certificate then in the possession of such revenue agent shall be cancelled and retained by such Secretary or other officer

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue authority

19 Every revenue agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling

Enrolment of revenue agents

¹ For rules made under this section as to Revenue agents see different local Rules and Orders

(Chapter IV.—Of Revenue-agents.)

Revenue-authority; and subject to such rules as the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue-office subordinate thereto.

No person to act as agent in revenue-offices unless qualified.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

Dismissal of revenue-agent convicted of criminal offence.

21. The Chief Controlling Revenue-authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

Suspension and dismissal of revenue-agents guilty of unprofessional conduct.

¹[22. The Chief Controlling Revenue-authority may also, after such inquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

- (a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (b) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other revenue-agent, or
- (c) who, directly or indirectly, procures or attempts to procure the employment of himself as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

¹ This section was substituted for the original section by s. 3 of the Legal Practitioners Act, 1896 (11 of 1896).

(Chapter IV—Of Revenue-agents Chapter V—Of Certificates)

(e) for any other reasonable cause]

23 If any revenue agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Procedure when revenue agent is so charged in subordinate office

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the inquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue authority, and such Authority shall proceed to acquit, suspend or dismiss him.

Any Revenue officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the order of the Chief Controlling Revenue authority, suspend from practice any revenue agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24 The Chief Controlling Revenue authority, in any case in which a Revenue agent has been acquitted under section 21 otherwise than by an order of the Chief Controlling Revenue-authority, may call for the record and pass such order thereon as seems fit.

Power to Chief Controlling Revenue authority to call for record

CHAPTER V

OF CERTIFICATES

25 Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed¹ [and of such description as the Local Government may, from time to time, prescribe²]

Fee for certificates

¹ These words were inserted by s. 5 of the Legal Practitioners Act, 1894 (9 of 1894)

² For instance of rule prescribing the stamp paper to be used for certificates, see different local Rules and Orders

(Chapter V.—Of Certificates. Chapter VI.—Of the Remuneration of Pleaders, Mukhtars and Revenue-agents.)

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed:

¹[Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorizing, under section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader.]

Dismissed practitioners to surrender certificates.

26. When any pleader, mukhtár or revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue-proceedings.

27. The High Court shall, from time to time, fix and regulate the fees² payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtár or attorney upon all proceedings (a) on the appellate side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts, ³[and in respect of the fees of his adversary's revenue-agent appearing, pleading or acting under section 10].

The Chief Controlling Revenue-authority shall, from time to time; fix and regulate⁴ the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtár or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

¹ This proviso was added by s. 4 of the Legal Practitioners (Amendment) Act, 1908 (1 of 1908).

² For rules as to pleaders' fees made by different High Courts, etc., see different local Rules and Orders.

³ These words were added by s. 6 of the Legal Practitioners Act, 1884 (9 of 1884).

⁴ For rules as to fees in revenue-proceedings, see different local Rules and Orders.

(Chapter VI.—Of the Remuneration of Pleaders, Mukhtars and Revenue-agents. Chapter VII.—Penalties.)

28. [Agreements with clients.] *Rep. by the Legal Practitioners (Fees) Act, 1926 (21 of 1926.)*

29. [Power to modify or cancel agreements.] *Rep. by the Legal Practitioners (Fees) Act, 1926 (21 of 1926.)*

30. [Agreements to exclude further claims.] *Rep. by the Legal Practitioners (Fees) Act, 1926 (21 of 1926.)*

31. [Reservation of responsibility for negligence.] *Rep. by the Legal Practitioners (Fees) Act, 1926 (21 of 1926.)*

CHAPTER VII.

PENALTIES.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

On persons illegally practising as pleaders, mukhtars or revenue-agents.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtár or revenue-agent, whilst he has been contravening the provisions of either of such sections.

33. Any pleader, mukhtár or revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed pleader, etc., failing to deliver certificates.

34. Any pleader, mukhtár or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtár or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

On suspended or dismissed practitioner practising during suspension or after dismissal

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-authority where the order has been passed by an officer subordinate to such Authority.

Revision of fines.

Power to
frame and
publish lists
of touts.

¹36. (1) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue-officer, not being below the rank of a Collector of a district, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto,) may frame and publish lists of persons proved to their or his satisfaction, ²[or to the satisfaction of any subordinate Court as provided in sub-section (2A)] by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

³[*Explanation.*—The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practise as legal practitioners in any Court or revenue-office, shall be evidence of the general repute of such person for the purposes of this sub-section.]

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

⁴[(2A) Any authority empowered under sub-section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such persons; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in sub-section (2), shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout; and that authority may include the name of any such person in the list of touts framed and published by that authority:

Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard.]

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

¹ This section was substituted by s. 4 of the Legal Practitioners Act, 1896 (11 of 1896).

² These words were inserted by s. 3 of the Legal Practitioners (Amendment) Act, 1926 (15 of 1926).

³ This Explanation was inserted by s. 3 of the Legal Practitioners (Amendment) Act, 1926 (15 of 1926).

⁴ Sub-section (2A) was inserted by s. 3, *ibid.*

(Chapter VII—Penalties Chapter VIII—Miscellaneous)

(d) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (e), and section 22, clause (d)

¹[(6) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both]

CHAPTER VIII

MISCELLANEOUS

37 To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations² for conducting such examinations

Local Gov
ernment to
appoint ex
aminers

38 Except as provided by sections 4, 5, '[7,] 16 '[25,] 27, 32 and 36, nothing in this Act applies to advocates vakils and attorneys admitted and enrolled by any High Court under the letters patent by which such Court is constituted or to mukhtars practising in such Court or to advocates enrolled '[under section 41 of this Act]

Exer ption of
High Court
practitioners
from certain
parts of Act

39 When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other

Suspension
or dismissal
of person
holding
mukhtar and
revenue
agent's
certificates

40 Notwithstanding anything heretofore contained no pleader, mukhtar or revenue agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him

Leaders
etc., not to
be suspended
or dismissed
without
being heard.

³[41 (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules⁴ as to the qualifications and admission of proper persons

Power for
certain High
Courts to
enrol advoc-
ates

¹ Sub section (6) was inserted by s 3 of the Legal Practitioners (Amendment) Act, 1926 (15 of 1926)

² For regulations made under this section by the Government of Burma, see Burma Gazette, 1911 Pt I, p 13

³ For regulations in different provinces, see different local Rules and Orders

⁴ These figures were added by s 5 of the Legal Practitioners (Amendment) Act 1908 (1 of 1908)

⁵ These words were substituted for the words "by the Chief Court of the Punjab" by s 7 of the Legal Practitioners Act, 1884 (9 of 1884)

⁶ This section was substituted by s 8 of the Legal Practitioners Act, 1884 (9 of 1884)

⁷ For rules see different local Rules and Orders

(Chapter VIII.—Miscellaneous. First Schedule.)

to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

(3) The High Court may dismiss any advocate so enrolled or suspend him from practice:

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and [except in the case of the Chief Courts of Oudh and Sind]¹ unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.]

Repeal of
Ch. VI of
Bom. Reg. II
of 1827 and
Acts I of
1846 and
XX of 1853.

²42. ³[So much of Chapter VI of Bombay Regulation II of 1827 as has not been repealed,] Act I of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*), and Act XX of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865	To amend the law relating to Pleadors and Mukhtars.	The whole.
Act XXIX of 1865	To amend the Pleadors, Mukhtars and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX of 1866	To extend to the Sadr Court of the North-Western Provinces certain provisions of "The Pleadors, Mukhtars and Revenue-agents Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876	To authorize Revenue-agents to practise in certain suits in the Munsifs Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877	The Punjab Courts Act, 1877	Sections 42, 43, 44 and 45.

¹ These words were inserted by s. 2 and Schedule of the Oudh Courts (Supplementary) Act, 1925 (32 of 1925). The words "and Sind" are to be read when the Sind Courts (Supplementary) Act (34 of 1926) comes into force.

² S. 42 was added by s. 9 of the Legal Practitioners Act, 1884 (9 of 1884).

³ Inserted by the Repealing and Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.

(Second Schedule)

SECOND SCHEDULE

VALUE OF STAMPS FOR CERTIFICATES

(See section 25)

I

For a certificate authorising the holder to practise as a pleader—

- (a) in the High Court and any subordinate Court—rupees fifty
- (b) in any Court of Small Causes in a Presidency-town—rupees twenty five
- (c) in all other subordinate Courts—rupees twenty-five
- (d) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen
- (e) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five

II

For a certificate authorising the holder to practise as a mulhtar—

- (f) in the High Court and any subordinate Court—rupees twenty-five
- (g) in any Court of Small Causes in a Presidency-town—rupees fifteen
- (h) in all other subordinate Courts—rupees fifteen
- (i) in the Courts of Subordinate Judges Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten
- (j) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five

III

For a certificate authorising the holder to practise as a revenue agent—

- (l) in the office of the Chief Controlling Revenue authority and in any revenue office subordinate to such Authority—rupees fifteen
- (m) in the office of a Commissioner and in any revenue office subordinate to a Commissioner—rupees ten
- (n) in the office of a Collector and in any revenue office subordinate to a Collector—rupees five

ACT No. I OF 1880.¹

[9th January 1880.]

An Act to confer certain powers on Religious Societies.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain question relating to such bodies; It is hereby enacted as follows:—

1. This Act may be called the Religious Societies Act, 1880.

Short title.

It 2 * * * *

shall extend to the whole of British India;³

Local extent.

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the ⁴[Local Government] may from time to time, by notification in the ⁵[local official Gazette], exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

Appointment of new trustee in cases not otherwise provided for.

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

¹ For Statement of Objects and Reasons, see Gazette of India, 1879, Pt. V, p. 770; for Proceedings in Council, see *ibid*, 1879, Supplement, pp. 598, 745 and 174; *ibid*, 1880, Supplement, pp. 23 and 170.

² The words "shall come into force at once, and" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

³ The Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts in the Chutia Nágpur Division, namely:—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga (now called the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44) included at this time the present District of Palamau, which was separated in 1894.

⁴ These words were substituted for the words "Governor General in Council" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

⁵ These words were substituted for the words "Gazette of India" by s. 2 and Sch. I, *ibid*.

3. Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877,¹ section 17.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Property to vest in new trustees without conveyance

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

Saving of existing mode of appointment and conveyance.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:

Provision for dissolution of societies and adjustment of their affairs.

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

Upon a dissolution no member to receive profit.

¹ See now the Indian Registration Act, 1908 (16 of 1908).

ACT No XII OF 1880¹

[9th July 1880]

An Act for the appointment of persons to the Office of Kází.

WHEREAS by the preamble to Act No XI of 1861² (*An Act to repeal the law relating to the offices of Hindu and Muhammadan Law Officers and to the offices of Kazi-ul Kuraat and of Kazi, and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kazi ul Kuraat, or of City, Town or Pargana Kázis, should be made by the Government and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed, and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kázis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kazi, It is hereby enacted as follows —

1 This Act may be called the Kázis Act, 1880,

Short title

It extends, in the first instance only to the territories administered by the Governor of Port Saint George in Council But any other Local Government may from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration⁴

2 Whenever it appears to the Local Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kázis should be appointed for such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kázis for such local area.

If any question arises whether any person has been rightly appointed Kází under this section, the decision thereof by the Local Government shall be conclusive.

¹ For Statement of Objects and Reasons, see Gazette of India, 1880, Pt V, p 21, for the Report of the Council see *ibid*, 1203

² Repealed by
The words

1203
1265)

“at once” were repealed by the

Repealing and Amendment Act, 1881 (No 11 of 1881)

⁴ The Act has been extended to certain places in—

- (1) the Bombay Presidency, see Bom R & O
- (2) the Lower Provinces, see Ben R & O
- (3) the Punjab, see Punj R & O
- (4) Burma—the Akyab District, see Bor R & O
- (5) Assam, see Assam Local Rules and Orders
- (6) the United Provinces, see U P R & O
- (7) the Central Provinces—to Jubbulpore see C P R & O

The Local Government may, if it thinks fit, suspend or remove any Kází appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

Naib Kázis.

3. Any Kází appointed under this Act may appoint one or more persons as his náib or náibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any náib so appointed.

When any Kází is suspended or removed under section 2, his náib or náibs (if any) shall be deemed to be suspended or removed, as the case may be.

Nothing in
Act to confer
judicial or
administra-
tive powers ;
or

to render the
presence of
Kází neces-
sary ; or to
prevent any
one acting
as Kází.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

- (a) to confer any judicial or administrative powers on any Kází or Náib Kází appointed hereunder; or
- (b) to render the presence of a Kází or Náib Kází necessary at the celebration of any marriage or the performance of any rite or ceremony; or
- (c) to prevent any person discharging any of the functions of a Kází.

ACT No. XI OF 1881.¹

[25th February 1881.]

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military ²[or air-force] service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Municipal Taxation Act, 1881.

Local extent.

It extends to the whole of British India;

3* * * *

¹ For Statement of Objects and Reasons, see Gazette of India, 1880, Pt. V, p. 193; for Proceedings in Council, see *ibid*, Supplement, pp. 904 and 915; and *ibid*, 1881, Supplement, p. 250. The Act has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I; Bur. Code, Vol. I.

² These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

³ The words "and shall come into force at once" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

2 In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force

Municipal Committee defined

3 Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

Power to prohibit levy of tax

(a) payable by any person subject to the [Army Act, the Indian Army Act, 1911, or the Air Force Act] who is compelled by the exigencies of military [or air-force] duty to reside within the limits of a municipality, or

(b) payable by the Secretary of State for India in Council

The Governor General in Council may, by a like order, rescind any such prohibition

4 So long as any order made under section 3, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person

Secretary of State in Council to pay taxes referred to in section 3 clause (1)

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound, by the regulations of the service to which he belongs, to keep

5 So long as any order made under section 3 prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable

Payments to be made in lieu of taxes referred to in section 3 clause (1)

6 If any question arises whether any duty is military [or air force] duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive

Decision of the Governor General in Council conclusive

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive

¹ For the purposes of this Act, every Cantonment Authority as defined in the Cantonments Act, 1924, is deemed to be a Municipal Committee, see s. 97 of the latter Act

² For instance of such orders relating to the Military, see Gen. R. and O. Vol. II, p. 278, for exemption of bicycles and tricycles used by non-commissioned officers and soldiers, see *ibid.*

³ These words were substituted for the words "Army Discipline and Regulation Act 1879, or the Indian Articles of War" by s. 2 and Schedule I of the Repealing and Amending Act, 1927 (10 of 1927)

⁴ These words were inserted by s. 2 and Sch. I, *ibid.*

ACT No. XVI OF 1881.¹

[15th March 1881.]

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Obstructions in Fairways Act, 1881;

2 * * * *

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,—

(a) cause such thing or any part thereof to be removed; or

(b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section 2, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate² or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by

4. The Local Government shall, whenever anything is removed under section 2, publish in the local official Gazette a notification con-

¹ For the Statement of Objects and Reasons, see *Gazette of India*, 1881, Pt. V, p. 3; for proceedings in Council, see *ibid.*, 1881, Supplement, pp. 19 and 405.

² The words "and it shall come into force at once" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

³ See s. 3 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

taining a description of such thing, and the time at which and the place from which the same was so removed

Local Government.

5 If, after publishing such notification, such thing is unclaimed, or if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

Things removed may, in certain cases, be sold

the Local Government may sell such thing by public auction, if it is of a perishable nature forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid

6 On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold or, if no such person appear and claim such surplus, shall be held in deposit for payment without interest, to any person thereafter establishing his right to the same

Proceeds how applied.

Provided that he makes the claim within one year from the date of the sale

7 For the purposes of this Act the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle equipment, cargo stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund

"Vessel" to include tackle, cargo, etc.

8 The Governor General in Council may from time to time, by notification in the Gazette of India, make rules to regulate or prohibit, in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion cause, or be likely to cause, obstruction or danger to navigation

Lower to make rules to regulate and prohibit the placing of obstructions in fairways.

9 Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency town in which he is found, and shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both

Penalty for breach of such rules.

10 Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 5 any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary

Compensation payable in certain cases for removal or prohibition of obstructions.

¹ For such notification (1) for Madras, see Mad R and O, (2) for Bombay, see Bom R and O

of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes¹ and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

Certain
action of the
Government
previous
to passing
of this Act
be deemed to
have been
taken here-
under.
Saving of
other powers
possessed by
Government.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Saving of usages relating to hundis, etc.
Commencement.
2. [*Repealed.*]
3. Interpretation-clause.

¹ See the Land Acquisition Act, 1894 (1 of 1894).

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

SECTIONS.

4. "Promissory note."
5. "Bill of exchange."
6. "Cheque."
7. "Drawer."
 "Drawee."
 "Drawee in case of need."
 "Acceptor."
 "Acceptor for honour."
 "Payee."
8. "Holder."
9. "Holder in due course."
10. "Payment in due course."
11. Inland instrument.
12. Foreign instrument.
13. "Negotiable instrument."
14. Negotiation.
15. Indorsement.
16. Indorsement "in blank" and "in full."
 "Indorsee."
17. Ambiguous instruments.
18. Where amount is stated differently in figures and words.
19. Instruments payable on demand.
20. Inchoate stamped instruments.
21. "At sight."
 "On presentment."
 "After sight."
22. "Maturity."
 Days of grace.
23. Calculating maturity of bill or note payable so many months after date or sight.
24. Calculating maturity of bill or note payable so many days after date or sight.
25. When day of maturity is a holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

SECTIONS.

26. Capacity to make, etc., promissory notes, etc.
Minor.
27. Agency.
28. Liability of agent signing.
29. Liability of legal representative signing.
30. Liability of drawer.
31. Liability of drawee of cheque.
32. Liability of maker of note and acceptor of bill.
33. Only drawee can be acceptor except in need or for honour.
34. Acceptance by several drawees not partners.
35. Liability of indorser.
36. Liability of prior parties to holder in due course.
37. Maker, drawer and acceptor principals.
38. Prior party a principal in respect of each subsequent party.
39. Suretyship.
40. Discharge of indorser's liability.
41. Acceptor bound, although indorsement forged.
42. Acceptance of bill drawn in fictitious name.
43. Negotiable instrument made, etc., without consideration.
44. Partial absence or failure of money-consideration.
45. Partial failure of consideration not consisting of money.
- 45A. Holder's right to duplicate of lost bill.

CHAPTER IV.

OF NEGOTIATION.

46. Delivery.
47. Negotiation by delivery.
48. Negotiation by indorsement.
49. Conversion of indorsement in blank into indorsement in full.
50. Effect of indorsement.
51. Who may negotiate.
52. Indorser who excludes his own liability or makes it conditional.
53. Holder deriving title from holder in due course.
54. Instrument indorsed in blank.

SECTIONS.

55. Conversion of indorsement in blank into indorsement in full.
 56. Indorsement for part of sum due.
 57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.
 58. Instrument obtained by unlawful means or for unlawful consideration.
 59. Instrument required after dishonour or when overdue.
Accommodation note or bill.
 60. Instrument negotiable till payment or satisfaction.
-

CHAPTER V.

OF PRESENTMENT.

61. Presentment for acceptance.
62. Presentment of promissory note for sight.
63. Drawee's time for deliberation.
64. Presentment for payment
65. Hours for presentment.
66. Presentment for payment of instrument payable after date or sight.
67. Presentment for payment of promissory note payable by instalments.
68. Presentment for payment of instrument payable at specified place and not elsewhere.
69. Instrument payable at specified place.
70. Presentment where no exclusive place specified.
71. Presentment when maker, etc., has no known place of business or residence.
72. Presentment of cheque to charge drawer.
73. Presentment of cheque to charge any other person.
74. Presentment of instrument payable on demand.
75. Presentment by or to agent, representative of deceased, or assignee of insolvent.
- 75A. Excuse for delay in presentment for acceptance or payment.
76. When presentment unnecessary.
77. Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

SECTIONS.

78. To whom payment should be made.
 79. Interest when rate specified.
 80. Interest when no rate specified.
 81. Delivery of instrument on payment, or indemnity in case of loss.
-

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. Discharge from liability—
 - (a) by cancellation;
 - (b) by release;
 - (c) by payment.
 83. Discharge by allowing drawee more than forty-eight hours to accept.
 84. When cheque not duly presented and drawer damaged thereby.
 85. Cheque payable to order.
 86. Parties not consenting discharged by qualified or limited acceptance.
 87. Effect of material alteration.
Alteration by indorsee.
 88. Acceptor or indorser bound notwithstanding previous alteration.
 89. Payment of instrument on which alteration is not apparent.
 90. Extinguishment of rights of action on bill in acceptor's hands.
-

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. Dishonour by non-acceptance.
92. Dishonour by non-payment.
93. By and to whom notice should be given.
94. Mode in which notice may be given.
95. Party receiving must transmit notice of dishonour.
96. Agent for presentment.
97. When party to whom notice given is dead.
98. When notice of dishonour is unnecessary.

CHAPTER IX.

OF NOTING AND PROTEST.

SECTIONS.

- 99. Noting.
- 100. Protest.
Protest for better security.
- 101. Contents of protest.
- 102. Notice of protest.
- 103. Protest for non-payment after dishonour by non-acceptance.
- 104. Protest of foreign bills.
- 104A. When noting equivalent to protest.

CHAPTER X.

OF REASONABLE TIME.

- 105. Reasonable time.
- 106. Reasonable time of giving notice of dishonour.
- 107. Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

- 108. Acceptance for honour.
- 109. How acceptance for honour must be made.
- 110. Acceptance not specifying for whose honour it is made.
- 111. Liability of acceptor for honour.
- 112. When acceptor for honour may be charged.
- 113. Payment for honour.
- 114. Right of payer for honour.
- 115. Drawee in case of need.
- 116. Acceptance and payment without protest.

CHAPTER XII.

OF COMPENSATION.

- 117. Rules as to compensation.

CHAPTER VI.

OF PAYMENT AND INTEREST.

SECTIONS.

78. To whom payment should be made.
 79. Interest when rate specified.
 80. Interest when no rate specified.
 81. Delivery of instrument on payment, or indemnity in case of loss.
-

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. Discharge from liability—
 - (a) by cancellation;
 - (b) by release;
 - (c) by payment.
 83. Discharge by allowing drawee more than forty-eight hours to accept.
 84. When cheque not duly presented and drawer damaged thereby.
 85. Cheque payable to order.
 86. Parties not consenting discharged by qualified or limited acceptance.
 87. Effect of material alteration.
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 88. Acceptor or indorser bound notwithstanding previous alteration.
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 90. Extinguishment of rights of action on bill in acceptor's hands.
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OF NOTICE OF DISHONOUR.

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96. Agent for presentment.
97. When party to whom notice given is dead.
98. When notice of dishonour is unnecessary.

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OF NOTING AND PROTEST.

SECTIONS.

- 99. Noting.
 - 100. Protest.
 - Protest for better security.
 - 101. Contents of protest.
 - 102. Notice of protest.
 - 103. Protest for non-payment after dishonour by non-acceptance.
 - 104. Protest of foreign bills.
 - 104A. When noting equivalent to protest.
-

CHAPTER X.

OF REASONABLE TIME.

- 105. Reasonable time.
 - 106. Reasonable time of giving notice of dishonour.
 - 107. Reasonable time for transmitting such notice.
-

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN
CASE OF NEED.

- 108. Acceptance for honour.
 - 109. How acceptance for honour must be made.
 - 110. Acceptance not specifying for whose honour it is made.
 - 111. Liability of acceptor for honour.
 - 112. When acceptor for honour may be charged.
 - 113. Payment for honour.
 - 114. Right of payer for honour.
 - 115. Drawee in case of need.
 - 116. Acceptance and payment without protest.
-

CHAPTER XII.

OF COMPENSATION.

- 117. Rules as to compensation.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

SECTIONS.

118. Presumptions as to negotiable instruments—

- (a) of consideration;
- (b) as to date;
- (c) as to time of acceptance;
- (d) as to time of transfer;
- (e) as to order of indorsements;
- (f) as to stamp;
- (g) that holder is a holder in due course.

119. Presumption on proof of protest.

120. Estoppel against denying original validity of instrument.

121. Estoppel against denying capacity of payee to indorse.

122. Estoppel against denying signature or capacity of prior party.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Cheque crossed generally.

124. Cheque crossed specially.

125. Crossing after issue.

126. Payment of cheque crossed generally.

Payment of cheque crossed specially.

127. Payment of cheque crossed specially more than once.

128. Payment in due course of crossed cheque.

129. Payment of crossed cheque out of due course.

130. Cheque bearing "not negotiable."

131. Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

132. Set of bills.

133. Holder of first acquired part entitled to all.

CHAPTER XVI

OF INTERNATIONAL LAW

SECTIONS

- 134 Law governing liability of maker, acceptor or indorser of foreign instrument
- 135 Law of place of payment governs dishonour
- 136 Instrument made, etc., out of British India, but in accordance with its law
- 137 Presumption as to foreign law

CHAPTER XVII

NOTARIES PUBLIC

- 138 Power to appoint notaries public
- 139 Power to make rules for notaries public

SCHEDULE —[*Repealed*]

ACT No XXVI of 1881¹

[9th December 1881.]

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques

WHEREAS it is expedient to define and amend the law relating to Preamble promissory notes, bills of exchange and cheques, It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

1 This Act may be called the Negotiable Instruments Act, 1881

Short title.

¹ For Statement of Objects and Reasons, see Gazette of India, 1876, p. 1830, for the Reports of the Select Committee see *ibid*, 1877, Pt V, p. 321, 1878, Pt V, p. 145, 1879, Pt V, p. 75, 1881, Pt V, p. 85, for discussions in Council, see *ibid*, 1876, Supplement, p. 1081, and *ibid*, 1881, Supplement, p. 1407.

This Act has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1893 (13 of 1893), s. 4 (1) and Sch. I, Bur. Code.

It has been declared in force in British Baluchistan by s. 3 of the British Baluchistan Laws Regulation 1913 (2 of 1913).

For summary procedure on negotiable instruments see the Code of Civil Procedure, 1908 (Act 6 of 1908), Sch. I, Order XXVII.

Local extent.
Saving of
usages relat-
ing to hun-
dis, etc.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21,¹ or III. affects any local usage relating to any instrument in an Oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

Commence-
ment.

2. [*Repeal of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Interpreta-
tion-clause.
“Banker.”

3. In this Act—

“banker” includes also persons or a corporation or company acting as bankers: and

“Notary
public.”

“notary public” includes also any person appointed by the ²[Local Government] to perform the functions of a notary public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

“Promissory
note.”

4. A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:

(a) “I promise to pay B or order Rs. 500.”

(b) “I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received.”

(c) “Mr. B, I O U Rs. 1,000.”

(d) “I promise to pay B Rs. 500 and all other sums which shall be due to him.”

(e) “I promise to pay B Rs. 500, first deducting thereout any money which he may owe me.”

(f) “I promise to pay B Rs. 500 seven days after my marriage with C.”

(g) “I promise to pay B Rs. 500 on D’s death, provided D leaves me enough to pay that sum.”

(h) “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.”

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

“Bill of ex-
change.”

5. A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person

¹ See now s. 25 of the Indian Paper Currency Act, 1923 (10 of 1923).

² These words were substituted for the words “Governor General in Council” by Schedule, Part I, of the Decentralization Act, 1914 (4 of 1914).

(Chapter II —Of Notes, Bills and Cheques)

to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument

A promise or order to pay is not "conditional," within the meaning of this section and section 4 by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain

The sum payable may be "certain," within the meaning of this section and section 4 although it includes future interest or is payable at an indicated rate of exchange or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person" within the meaning of this section and section 4, although he is misnamed or designated by description only

6 A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand

7. The maker of a bill of exchange or cheque is called the "drawer," the person thereby directed to pay is called the "drawee" Drawer
Drawee

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need," Drawee in
case of need.

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor" Acceptor

[When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra* Acceptor
for honour *protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour"

The person named in the instrument to whom or to whose order the money is by the instrument directed to be paid is called the "payee" Payee

8 The "holder" of a promissory note bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the party thereto Holder

¹ These words were substituted for the words "When acceptance is refused and the bill is protested for non-acceptance" by s 2 of the Negotiable Instruments Act, 1885 (2 of 1885)

(Chapter II —Of Notes, Bills and Cheques)

14 When a promissory note, bill of exchange or cheque is transferred *Negotiation.* to any person, so as to constitute that person the holder thereof the instrument is said to be negotiated

15 When the maker or holder of a negotiable instrument signs the *Indorsement.* same, otherwise than as such maker, for the purpose of negotiation on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument he is said to indorse the same, and is called the "indorser"

16 ¹(1) If the indorser signs his name only, the indorsement is said *Indorsement* to be "in blank," and if he adds a direction to pay the amount men- *in blank* tioned in the instrument to or to the order of, a specified per on, the *and is full.* indorsement is said to be "in full," and the per on so specified is called the "indorsee" of the instrument

²(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee] *Indo see*

17 Where an instrument may be construed either as a promissory *Unambiguous* note or bill of exchange the holder may at his election treat it as either, *Instruments.* and the instrument shall be thenceforward treated accordingly

18 If the amount undertaken or ordered to be paid is stated differ- *Where* ently in figures and in words, the amount stated in words shall be the *amount is* amount undertaken or ordered to be paid *stated in* *figures and* *words.*

19 A promissory note or bill of exchange in which no time for *I. Instruments* payment is specified, and a cheque are payable on demand

20 Where one person signs and delivers to another a paper stamped *Inchoate* in accordance with the law relating to negotiable instruments then in *stamped in* force in British India, and either wholly blank or having written there- *instruments.* on an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp The per on so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount Provided that no person other than a holder in due course shall recover from the per on delivering the instrument anything in excess of the amount intended by him to be paid thereunder

21. In a promissory note or bill of exchange the expressions "at *At sight* sight" and "on presentment" mean on demand The expression *On presentment* "after sight" means in a promissory note, after presentment for *After sight*

¹ This figure and the brackets were inserted by s. 3 of the Negotiable Instruments (Amendment) Act 1914 (5 of 1914)

² This sub-section was added by s. 3 1917

sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

“Maturity.”

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of
grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Calculating
maturity of
bill or note
payable so
many months
after date or
sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(a) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(b) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(c) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

Calculating
maturity of
bill or note
payable so
many days
after date or
sight.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of
maturity is a
holiday.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression “public holiday” includes Sundays: New Year’s day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government,¹ by notification in the official Gazette, to be a public holiday.

¹ The powers of a Local Government under this Explanation have been delegated to the Commissioner in Sindh by the Government of Bombay under section 2 of Act 5 of 1868, see *Bombay Gazette*, 1903, Pt. I, p. 449.

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

26 Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque Capacity to make etc. promissory notes, etc.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself Minor

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which under the law for the time being in force, they are so empowered

27. Every person capable of binding himself or of being bound as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name Agent

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal

An authority to draw bills of exchange does not of itself import an authority to indorse

28 An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument except to the holder who induced him to sign upon the belief that the principal only would be held liable Liability of agent signing

29 A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such Liability of legal representative signing

30 The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided Liability of drawer

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default Liability of drawee of cheque

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill Liability of maker of note and acceptor of bill

of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Only drawee
can be accept-
or except in
need or for
honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance
by several
drawees not
partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of
indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without in such indorsement expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of
prior parties
to holder in
due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker,
drawer
and acceptor
principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party
a principal
in respect of
each subse-
quent party.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may **IX** o

(Chapter III —Parties to Notes, Bills and Cheques)

expressly reserve his right to charge the other parties, and in such case they are not discharged

40. When the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity

Discharge of indorser's liability

Illustration

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank —

First indorsement, B'

Second indorsement Peter Williams

Third indorsement, Wright & Co "

Fourth indorsement, John Rozario "

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co A is not entitled to recover anything from John Rozario

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill

Acceptor bound although indorsement forged

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer

Acceptance of bill drawn in fictitious name

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto

Negotiable instrument made etc. without consideration

Exception I —No party for whom a recommendation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his recommendation.

Exception II —No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was criminally

Partial absence of full force of

money-con-
sideration.

absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial
failure of
consideration
not consist-
ing of money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Holder's
right to dup-
licate of lost
bill.

¹[45A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

¹ S. 45A was inserted by s. 3 of the Negotiable Instruments Act, 1885 (2 of 1885).

(Chapter IV.—Of Negotiation)

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof. Negotiation by delivery.

Exception—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens

Illustrations

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated

able to bearer, which is in the hands of B, directs the banker to open an account with B. The banker does so. B's agent delivers the instrument to the banker.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque [payable to order] is negotiable by the holder by indorsement and delivery thereof. Negotiation by indorsement.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature in direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full, and the holder does not thereby incur the responsibility of an indorser. Conversion of indorsement in blank into indorsement in full.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation, but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorser an agent to indorse the instrument or to receive its contents for the indorser, or for some other specified person. Effect of indorsement.

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer—

- (a) "Pay the contents to C only"
- (b) "Pay C for my use"
- (c) "Pay C or order for the account of B"
- (d) "The within must be credited to C"

These indorsements exclude the right of further negotiation by C

- (e) "Pay C"
- (f) "Pay C value in account with the Oriental Bank"
- (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others"

These indorsements do not exclude the right of further negotiation by C

¹ These words were substituted for the words "payable to the order of a specified person or to a specified person or order" by s. 4 of the Negotiable Instruments (Amendment) Act, 1919 (2 of 1919)

Who may
negotiate.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or indorsee to indorse or negotiate an instrument unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Indorser who
excludes his
own liability
or makes it
conditional.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(a) The indorser of a negotiable instrument signs his name, adding the words—
"Without recourse."

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Holder deriv-
ing title from
holder in due
course.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Instrument
indorsed in
blank.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of
indorsement
in blank into
indorsement
in full.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement
for part of
sum due.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

(Chapter IV.—Of Negotiation. Chapter V.—Of Presentment.)

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodating note or bill.

Illustration

... deposited with the drawer
... he bill, with power to the
... of the bill if it were not
paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn,

Presentment for acceptance.

Negotiable Instruments. [1881: Act XXVI.]
(Chapter V.—Of Presentment.)

and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

¹[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee ²[forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

¹[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]
Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

¹ This paragraph was added by s. 4 of the Negotiable Instruments Act, 1885 (2 of 1885).

² This word was substituted for the word "twenty-four" by s. 2 of the Negotiable Instruments (Amendment) Act, 1921 (12 of 1921).

(Chapter V—Of Presentment)

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place

Presentment
for payment
of instrument
payable at
specified
place and not
elsewhere.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place

Instrument
payable at
specified
place.

70. A promissory note or bill of exchange not made payable as mentioned in sections 68. and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment
where no ex-
clusive place
specified.]

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found

Presentment
when maker,
etc., has no
known place
of business
or residence

72. ¹[Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer

Presentment
of cheque
to charge
drawer

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment
of cheque to
charge any
other person.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment
of instrument
payable on
demand.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Presentment
by or to
agent, repre-
sentative of
deceased or
assignee of
insolvent.]

²[75A. Delay in presentment ³[for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.]

Excuse for
delay in
presentment
for accept-
ance or pay-
ment.

¹ These words and figures were inserted by s. 2 of the Negotiable Instruments (Amendment) Act, 1897 (6 of 1897)

² This section was inserted by s. 2 of the Negotiable Instruments (Amendment) Act, 1920 (25 of 1920)

³ These words were substituted for the words "for payment" by s. 3 of the Negotiable Instruments (Amendment) Act, 1921 (12 of 1921).

When presentment unnecessary.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

- (a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,
 - if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,
 - if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,
 - if the instrument not being payable at any specified place, he cannot after due search be found;
- (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
- (c) as against any party if, after maturity, with knowledge that the instrument has not been presented—
 - he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part,
 - or otherwise waives his right to take advantage of any default in presentment for payment,
- (d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligently dealing with bill presented for payment.

77. When a bill of exchange accepted payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

OF PAYMENT AND INTEREST.

To whom payment should be made.

78. Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from

(Chapter VI—Of Payment and Interest Chapter VII—Of Discharge from Liability on Notes, Bills and Cheques)

the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, '[notwithstanding any agreement relating to interest between any parties to the instrument,] be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs

Interest when no rate specified.

Explanation—When the party charged is the indorser of an instrument dishonoured by non payment, he is liable to pay interest only from the time that he receives notice of the dishonour

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him

Delivery of instrument on payment, or indemnity in case of loss

CHAPTER VII

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

Discharge from liability

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder,

—by cancellation.

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge,

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank and such maker, acceptor or indorser makes payment in due course of the amount due thereon

by receipt.

83. If the holder of a bill of exchange allows the drawer more than '[forty-eight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder

Discharge of all parties to such bill who have not consented to such allowance.

words "except in cases provided for by s 2 of the Negotiable Instruments

"twenty four" by s 2 of the Negotiable Instruments Act 1921)

When cheque
not duly
presented
and drawer
damaged
thereby.

¹[84. (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.]

Illustrations.

(a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque pay-
able to order.

85. Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not
consenting
discharged
by qualified
or limited
acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;
- (b) where it undertakes the payment of part only of the sum ordered to be paid;
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

¹ This section was substituted by s. 3 of the Negotiable Instruments Act Amendment Act, 1897 (6 of 1897).

(Chapter VII.—Of Discharge from Liability of Notes, Bills and Cheques.

Chapter VIII.—Of Notice of Dishonour.)

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Effect of material alteration.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Acceptor or indorser bound notwithstanding previous alteration.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Dishonour by non-acceptance.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the

Dishonour by non-payment.

bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to
whom notice
should be
given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in
which notice
may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must
transit
notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for
presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party
to whom
notice given
is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice
of dishonour
is unnecessary.

98. No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;

- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers when the acceptor is also a drawer;
- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured Noting by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. When a promissory note or bill of exchange has been dis- Protest honoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security. Protest for better security.

101. A protest under section 100 must contain—

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the name of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found;

Contents of protest.

(Chapter IX.—Of Noting and Protest. Chapter X.—Of Reasonable Time.)

- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

¹[A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

Notice of protest. **102.** When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance. **103.** All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills. **104.** Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

When noting equivalent to protest. ²[**104A.** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.]

CHAPTER X

OF REASONABLE TIME.

Reasonable time. **105.** In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

¹ This paragraph was added by s. 5 of the Negotiable Instruments Act, 1885 (2 of 1885).

² S. 104A was inserted by s. 6, *ibid.*

(Chapter X —Of Reasonable time Chapter XI —Of Acceptance and Payment for Honour and Reference in Case of Need)

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour Reasonable time of giving notice of dishonour

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder Reasonable time for transmitting such notice.

CHAPTER XI

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto * * *

109. A person desiring to accept for honour must, ²[by writing on the bill under his hand,] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour * * *

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer Acceptance not specifying for whose honour it is made.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawer do not and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance Liability of acceptor for honour

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentation, not later than the day next after the day of its maturity.

and was repealed by s. 7 of the Negotiable Instru-

for the words "in the presence of a notary public and" by s. 8, *ibid*

* The words "and such declaration must be recorded by the notary in his register" were repealed by s. 8, *ibid*

(Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need. Chapter XII.—Of Compensation.)

When accept-
or for honour
may be
charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for
honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying ¹[or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of
payer for
honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in
case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance
and payment
without
protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to
compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall * * * be determined by the following rules:—

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

¹ These words were inserted by s. 9 of the Negotiable Instruments Act, 1885 (2 of 1885).

² Certain words were omitted by s. 3 of the Negotiable Instruments (Interest) Act, 1926 (30 of 1926).

- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII

SPECIAL RULES OF EVIDENCE

118 Until the contrary is proved, the following presumptions shall be made —

- (a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration, 1 presumption as to negotiable instrument of consideration.
- (b) that every negotiable instrument bearing a date was made or drawn on such date, as to date
- (c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity, as to time of acceptance.
- (d) that every transfer of a negotiable instrument was made before its maturity, as to time of transfer.
- (e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon, as to order of indorsement.
- (f) that a lost promissory note, bill of exchange or cheque was duly stamped, as to stamp.
- (g) that the holder of a negotiable instrument is a holder in due course. Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him. that holder is a holder in due course

119 In a suit upon an instrument which has been dishonoured the Court shall, on proof of the protest presume the fact of dishonour unless and until such fact is disproved. Every instrument is presumed to be dishonoured unless the contrary is proved.

(Chapter XIII.—Special Rules of Evidence. Chapter XIV.—Of Crossed Cheques.)

Estoppel
against deny-
ing original
validity of
instrument.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel
against deny-
ing capacity
of payee to
indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange ¹[payable to order] shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel
against deny-
ing signature
or capacity of
prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

Cheque
crossed
generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Cheque
crossed
specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after
issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of
cheque
crossed
generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of
cheque
crossed
specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

¹ These words were substituted for the words "payable to, or to the order of, a specified person" by s. 5 of the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919).

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof

Payment of cheque crossed specially more than once.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof

Payment in due course of crossed cheque

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid

Payment of crossed cheque out of due course.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had

Cheque bearing not negotiable.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment

Non liability of banker receiving payment of cheque

[Explanation — A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof]

CHAPTER XV

OF BILLS IN SETS

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set, but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished

¹ This explanation was added by s. 2 of the Negotiable Instruments (Amendment) Act, 1922 (13 of 1922).

(Chapter XV.—Of Bills in Sets. Chapter XVI.—Of International Law.)

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Holder of
first acquired
part entitled
to all.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Law govern-
ing liability
of maker,
acceptor or
indorser of
foreign
instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Law of place
of payment
governs
dishonour.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument
made, etc.,
out of British
India, but in
accordance
with its law.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption
as to foreign
law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

1882 Act II] *Trusts*CHAPTER XVII¹

NOTARIES PUBLIC

138 The ²[Local Government] may from time to time by notification in the official Gazette, appoint³ any person by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act

Power to appoint notaries public.

139⁴ The ²[Local Government] may, from time to time by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters) fix the fees payable to such notaries

Power to make rules for notaries public.

SCHEDULE

[ENACTMENTS REPEALED]

Rep by the Repealing and Amending Act, 1891 (VII of 1891)

THE INDIAN TRUSTS ACT 1882

CONTENTS

PREAMBLE

CHAPTER I

PRELIMINARY

SECTIONS

- 1 Short title
- Commencement
- Local extent
- Savings

¹ Ch XVII was inserted by s 10 of the Negotiable Instruments Act, 1881 (2 of 1881)

² These words were substituted for the words "Governor General in Council" by Schedule, Part I, of the Decentralization Act 1914 (1 of 1914)

³ For appointment of notaries public within districts and sub-districts of the Madras Presidency, see Mad R and O in Bombay see Bom R and O

⁴ For rules under this section see Notification No 1433 dated 30th September 1886 Gazette of India 1886 Pt I p 512 and Gnl R & O, Vol II p 279 On the extension of the Act to Upper Burma similar rules were framed with respect to that Province, see Notification No 429, dated 11th May 1891, Burma Gazette, Pt II, p 109, Bur R M

SECTIONS.

2. Repeal of enactments.
3. Interpretation-clause.
Expressions defined in Act IX of 1872.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. Lawful purpose.
5. Trust of immoveable property.
Trust of moveable property.
6. Creation of trust.
7. Who may create trusts.
8. Subject of trust.
9. Who may be beneficiary.
Disclaimer by beneficiary.
10. Who may be trustee.
No one bound to accept trust.
Acceptance of trust.
Disclaimer of trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. Trustee to execute trust.
12. Trustee to inform himself of state of trust-property.
13. Trustee to protect title to trust-property.
14. Trustee not to set up title adverse to beneficiary.
15. Care required from trustee.
16. Conversion of perishable property.
17. Trustee to be impartial.
18. Trustee to prevent waste.
19. Accounts and information.
20. Investment of trust-money.
- 20A. Power to purchase redeemable stock at a premium.
21. Mortgage of land pledged to Government under Act XXVI of 1871. Deposit in Government Savings Bank.
22. Sale by trustee directed to sell within specified time.
23. Liability for breach of trust.
24. No set-off allowed to trustee.
25. Non-liability for predecessor's default.

SECTIONS.

26. Non-liability for co-trustee's default.
Joining in receipt for conformity.
 27. Several liability of co-trustees.
Contribution as between co-trustees.
 28. Non-liability of trustee paying without notice of transfer by beneficiary.
 29. Liability of trustee where beneficiary's interest is forfeited to Government.
 30. Indemnity of trustees.
-

CHAPTER IV

OF THE RIGHTS AND POWERS OF TRUSTEES.

31. Right to title-deed.
 32. Right to reimbursement of expenses.
Right to be recouped for erroneous overpayment.
 33. Right to indemnity from gainer by breach of trust.
 34. Right to apply to Court for opinion in management of trust-property.
 35. Right to settlement of accounts.
 36. General authority of trustee.
 37. Power to sell in lots, and either by public auction or private contract.
 38. Power to sell under special conditions.
Power to buy in and re-sell.
Time allowed for selling trust-property.
 39. Power to convey.
 40. Power to vary investments.
 41. Power to apply property of minors, etc., for their maintenance, etc.
 42. Power to give receipts.
 43. Power to compound, etc.
 44. Power to several trustees of whom one disclaims or dies.
 45. Suspension of trustee's powers by decree.
-

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

46. Trustee cannot renounce after acceptance.
47. Trustee cannot delegate.

SECTIONS.

- 48. Co-trustees cannot act singly.
- 49. Control of discretionary power.
- 50. Trustee may not charge for services.
- 51. Trustee may not use trust-property for his own profit.
- 52. Trustee for sale or his agent may not buy.
- 53. Trustee may not buy beneficiary's interest without permission.
Trustee for purchase.
- 54. Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

- 55. Rights to rents and profits.
- 56. Right to specific execution.
Right to transfer of possession
- 57. Right to inspect and take copies of instrument of trust, accounts,
etc.
- 58. Right to transfer beneficial interest.
- 59. Right to sue for execution of trust.
- 60. Right to proper trustees.
- 61. Right to compel to any act of duty.
- 62. Wrongful purchase by trustee.
- 63. Following trust-property—
into the hands of third persons;
into that into which it has been converted.
- 64. Saving of rights of certain transferees.
- 65. Acquisition by trustee of trust-property wrongfully converted.
- 66. Right in case of blended property.
- 67. Wrongful employment by partner-trustee of trust-property for
partnership purposes.
- 68. Liability of beneficiary joining in breach of trust.
- 69. Rights and liabilities of beneficiary's transferee.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

- 70. Office how vacated.
- 71. Discharge of trustee.
- 72. Petition to be discharged from trust.

SECTIONS

- 73. Appointment of new trustees on death, etc.
- 74. Appointment by Court
 - Rules for selecting new trustees
- 75. Vesting of trust-property in new trustees.
 - Powers of new trustees.
- 76. Survival of trust

 CHAPTER VIII

OF THE EXTINCTION OF TRUSTS.

- 77. Trust how extinguished
- 78. Revocation of trust
- 79. Revocation not to defeat what trustees have duly done

 CHAPTER IX

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

- 80. Where obligation in nature of trust is created
- 81. Where it does not appear that transferor intended to dispose of beneficial interest
- 82. Transfer to one for consideration paid by another
- 83. Trust incapable of execution or executed without exhausting trust-property.
- 84. Transfer for illegal purpose
- 85. Bequest for illegal purpose
 - Bequest of which revocation is prevented by coercion
- 86. Transfer pursuant to rescindable contract
- 87. Debtor becoming creditor's representative
- 88. Advantage gained by fiduciary.
- 89. Advantage gained by exercise of undue influence.
- 90. Advantage gained by qualified owner.
- 91. Property acquired with notice of existing contract.
- 92. Purchase by per on contracting to buy property to be held on trust.
- 93. Advantage secretly gained by one of several compounding creditors.
- 94. Constructive trusts in cases not expressly provided for.
- 95. Obligor's duties, liabilities and disabilities.
- 96. Saving of rights of bona fide purchasers.

 THE SCHEDULE.

ACT No. II OF 1882.¹

[13th January 1882.]

An Act to define and amend the law relating to Private Trusts and Trustees.

Preamble.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.
Commence-
ment.

1. This Act may be called the Indian Trusts Act, 1882: and it shall come into force on the first day of March, 1882.

Local extent.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the ²North-Western Provinces and the Punjab, the Chief Commissioners of ²Oudh, the Central Provinces, Coorg and Assam: and the Local Government may from time to time, by notification³ in the official Gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan law as to *wagf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second Chapter of this Act applies to trusts created before the said day.

Savings.

2. The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends.

Repeal of
enactments.Interpreta-
tion-clause—
“trust”:

3. A “trust” is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or

¹ For Report of the Indian Law Commission on the Private Trusts Bill which they were instructed to consider among others, see Gazette of India, 1880, Supplement, p. 104, and for the Statement of Objects and Reasons, see Gazette of India, 1880, Pt. V, p. 476; for Report of the Select Committee, see *ibid*, Supplement, 1881, p. 766; for further Report of the Select Committee, see *ibid*, Supplement, 1882, p. 67; for Proceedings in Council, see *ibid*, Supplement, 1881, p. 687; and *ibid*, Supplement, 1882, p. 68.

² The reference to the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh should be construed as referring to the Governor of the United Provinces of Agra and Oudh, and the reference to the Chief Commissioners of the Central Provinces and Assam to the Governors of those Provinces.

³ This Act has been extended under this section to—

(1) the whole of the Bombay Presidency, including the Scheduled Districts—see Notification No. 4802, Bom. Gazette, 1891, Pt. I, p. 743.

(2) the area included within the limits of Rangoon Town as from time to time defined for the purposes of the Lower Burma Courts Act, 1900 (VI of 1900), Bur. Gazette, 1904, Pt. I, p. 628.

(3) the Presidency of Fort William in Bengal, see Calcutta Gazette, 1913, Pt. I, p. 360.

(4) the province of Bihar and Orissa, see B. & O. Gazette, 1913, Pt. II, p. 1005.

(5) the District of Ajmer-Merwara, see Gazette of India, 1916, Pt. II, p. 2118.

(Chapter I.—Preliminary. Chapter II.—Of the Creation of Trusts.)

declared and accepted by him, for the benefit of another, or of another and the owner.

the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229; and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meaning respectively attributed to them by that Act.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section the expression "law" includes, where the trust-property is immovable and situate in a foreign country, the law of such country.

Illustrations.

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death to B. A is declared an insolvent. The trust for A is invalid as against his creditors.

(Chapter II.—Of the Creation of Trusts.)

Trust of im-
moveable
property.

5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of
moveable
property.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

Creation of
trust.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Illustrations.

(a) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(b) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may
create trusts.

7. A trust may be created—

(a) by every person competent to contract,¹ and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of
trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be merely beneficial interest under a subsisting trust.

Who may be
beneficiary.

9. Every person capable of holding property may be a beneficiary.

¹ See s. 11 of the Indian Contract Act, 1872 (9 of 1872).

(Chapter II—Of the Creation of Trusts Chapter III—Of the Duties and Liabilities of Trustees)

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith Disclaimer by beneficiary

10. Every person capable of holding property may be a trustee, but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract Who may be trustee

No one is bound to accept a trust No one bound to accept trust

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance Acceptance of trust

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him Disclaimer of trust

A disclaimer by one of two or more co trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust

Illustrations

(a) A bequeaths certain property to B and C his executors as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III

OF THE DUTIES AND LIABILITIES OF TRUSTEES

11. The trustee is bound to fulfil the purpose of the trust and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract Trust to obey at trust

Where the beneficiary is incompetent to contract, his consent may for the purposes of this section be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust or, when such instrument is a will, at the date of

(Chapter III.—Of the Duties and Liabilities of Trustees.)

his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(a) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(b) A, a trustee of certain land for X, Y and Z, is authorised to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it.

Trustee to inform himself of state of trust-property.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust-property.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustration.

The trust property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877,¹ the trustee's duty is to cause the instrument to be registered. III o

Trustee not to set up title adverse to beneficiary.

14. The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Care required from trustee.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

Illustrations.

(a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

¹ See now the Indian Registration Act, 1908 (16 of 1903).

(Chapter III.—Of the Duties and Liabilities of Trustees.)

property, directs the tenant to pay the rents on B only till wanted. Before the money is drawn A had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B releases one and compounds the other, in good faith, and reasonably so A is not bound to make good any

(d) A, a trustee directed to sell the same, but does not advertise the sale and causes loss in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or of a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character. Conversion of perishable property.

Illustrations

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture there in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another. Trustee to be impartial.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

(Chapter III.—Of the Duties and Liabilities of Trustees.)

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b). at all reasonable times, at the request of the beneficiary to furnish him with full and accurate information as to the amount and state of the trust-property.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

(a) in promissory notes, debentures, stock or other securities ¹[of any Local Government or] of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(b) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India:

²[Provided that, after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;]

³[(bb) in India three and a half per cent. stock, India three per cent. stock, India two and a half per cent. stock or any other capital stock which may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenues of India;]

(c) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council ⁴[or by the Government of India] ⁵[or in debentures of the Bombay

¹ These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1920 (31 of 1920).

² This proviso was added by s. 2 (i) of the Indian Trusts (Amendment) Act, 1916 (1 of 1916).

³ This clause was inserted by s. 2 (ii), *ibid.*

⁴ These words were added by s. 2 (iii), *ibid.*

⁵ These words were inserted by s. 2 of the Indian Trusts (Amendment) Act, 1917 (31 of 1917).

(Chapter III.—Of the Duties and Liabilities of Trustees.)

¹[Provincial] Co-operative Bank, Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council;]

(d) ²[in debentures or other securities for money issued, under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;]

(e) on a first mortgage of immoveable property situate in British India: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

(f) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e), and (f) shall be made without his consent in writing.

³[20A. (1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value: Power to purchase or redeem stock at a premium

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (e) and (d) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.]

21. Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an

¹This word was substituted for the word "Central" by s. 2 and Schedule 1 of the Indian Trusts (Amendment) Act, 1925 (37 of 1925).

²by section 2 of the Indian Trusts (Amendment) Act,

(1 of 1916).

of the Act and passed by the Legislature of the Province of Madras in 1917.

(Chapter III.—Of the Duties and Liabilities of Trustees.)

Deposit in
Government
Savings
Bank.

Sale by
trustee
directed to
sell within
specified
time.

advance under the Land Improvement Act, 1871¹, or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Illustration.

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

Liability for
breach of
trust.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(a) where he has actually received interest:

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

(c) where the trustee ought to have received interest, but has not done so:

(d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

¹ See now the Land Improvement Loans Act, 1883 (19 of 1883).

(Chapter III.—Of the Duties and Liabilities of Trustees.)

Illustrations.

(a) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.

(c) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g) Trust-property is invested in one of the securities mentioned in section 20, clause (a), (b), (c) or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

No set off allowed to trustee.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

No liability for predecessor's default.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee.

Non liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith or allows him to retain it longer than the circumstances of the case reasonably require:

(Chapter III.—Of the Duties and Liabilities of Trustees.)

- (c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

Several liability of co-trustees.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees;

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Indemnity of trustees.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER IV

OF THE RIGHTS AND POWERS OF TRUSTEES

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property Right to title deed

32. Every trustee may reimburse himself or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization preservation or benefit of the trust-property, or the protection or support of the beneficiary Right to reimbursement of expense

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest

If the trust-property fail the trustee is entitled to recover from the beneficiary personally on whose behalf he acted and at whose request, expressed or implied, he made the payment the amount of such expenses

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment Rights to be coupled for erroneous over payment

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach, and where he is a beneficiary the trustee has a charge on his interest for such amount Right to indemnity from person or beneficiary of trust

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud

34. Any trustee may without instituting a suit apply by petition to a principal Civil Court of original jurisdiction for its opinion advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficult or importance, not proper in the opinion of the Court for summary disposal Right to apply to Court for opinion or direction in management of trust-property

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed,

(Chapter IV.—Of the Rights and Powers of Trustees.)

so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

Right to settlement of accounts.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

General authority of trustee.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

* * * * *

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

Power to sell in lots, and either by public auction or private contract

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

Power to sell under special conditions.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Power to buy in and re-sell.

Time allowed for selling trust-property.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations.

(a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

¹ The second paragraph of this section was repealed by the Repealing and Amending Act, 1891 (12 of 1891).

39 For the purpose of completing any such sale the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary Power to convey

40 A trustee may at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time may make such investments for others of the same nature Power to vary investments.

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life or for any greater estate, no such change of investment shall be made without his consent in writing

41 Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20 for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen Power to apply property of minors, &c., for their maintenance, &c.

Provided that such trustee may at any time if he thinks fit apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year

Where the income of the trust property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors

42 Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power, and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from accounting to the application thereof, or being accountable for any loss or misapplication thereof Power to give receipt

(Chapter IV.—Of the Rights and Powers of Trustees. Chapter V.—Of the Disabilities of Trustees.)

Power to
compound,
etc.—

43. Two or more trustees acting together may, if and as they think fit,—

- (a) accept any composition or any security for any debt or for any property claimed;
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

Power to
several
trustees
of whom
one disclaims
or dies.

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension of
trustee's
powers by
decree.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

Trustee cannot
renounce
after accept-
ance.

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or, (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

(Chapter I —Of the Disabilities of Trustees)

47. A trustee cannot delegate his office or any of his duties either to a Trustee or co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation

Explanation —The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section

Illustrations

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor B dies C may bequeath the trust-property to D and E upon the trusts of A's will

(b) A is a trustee of certain property with power to sell the same A may employ an auctioneer to effect the sale

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C B may employ a proper person to collect these rents

48. When there are more trustees than one all must join in the execution of the trust, except when the instrument of trust otherwise provides

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith such power may be controlled by a principal Civil Court of original jurisdiction

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust a trustee has no right to remuneration for his trouble skill and loss of time in executing the trust

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator or person holding a certificate of administration

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust

52. No trustee who is duty bound to sell trust property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person

53. No trustee and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

(Chapter V.—Of the Disabilities of Trustees. Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

Co-trustees may not lend to one of themselves.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

Rights to rents and profits.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Right to specific execution.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to transfer of possession.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, etc.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest.

58. The beneficiary, if competent to contract, may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

59. When no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee. Right to sue for execution of trust.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons. Right to proper trustees.

Explanation I.—The following are not proper persons within the meaning of this section:—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances, and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime, then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust. Right to compel to any act of duty.

Illustrations.

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for injunction to restrain A from making the sale.

Wrongful
purchase by
trustee.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the net profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser: or

(b) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following
trust-
property—
into the
hands of
third per-
sons;
into that into
which it has
been con-
verted.

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(a) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary)

84. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

Saving of
rights of
certain
transferees

- (a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or
- (b) a transferee for consideration from such a transferee

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes, and negotiable instruments in the hands of a *bonâ fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872, section 108, or the liability of a person to whom a debt or charge is transferred.

85. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration

Acquisition
by trustee of
trust property
wrongfully
converted

86. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Right in
case of
blended
property

87. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

Wrongful
employment
by partner-
trustee of
trust prop-
erty for
partnership
purposes

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets

in trust for C, appoints B his sole executor. B gives an indemnity to X and is jointly liable with B to C as having committed by B.

88. Where one of several beneficiaries—

- (a) joins in committing breach of trust, or
- (b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

Liability of
co-tenant
in breach of
trust

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary. Chapter VII.—Of Vacating the Office of Trustee.)

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferee for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

Office how
vacated.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of
trustee.

71. The trustee may be discharged from his office only as follows:—

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment under this Act of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or; where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act.

Petition to
be discharged
from trust.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

(Chapter VII.—Of Vacating the Office of Trustee.)

73. Whenever any person appointed a trustee disclaims, or any trustee, Appointment of new trustees on death, &c. either original or substituted, dies, or is for a continuous period of six months absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument of trust (if any), or
- (b) if there be no such person, or no such person able and willing to act, *the author of the trust if he be alive and competent to contract*, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly. Appointment by Court.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust, and, (d) where there are more beneficiaries than one, to the interests of all such beneficiaries. Rules for selecting new trustees.

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or Vesting of trust-pro-

(Chapter VII.—Of Vacating the Office of Trustee. Chapter VIII.—Of the Extinction of Trusts.)

- erty in new trustees. continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.
- Powers of new trustees. Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.
- Survival of trust. **76.** On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

- Trust how extinguished. **77.** A trust is extinguished—
- (a) when its purpose is completely fulfilled; or
 - (b) when its purpose becomes unlawful; or
 - (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
 - (d) when the trust, being revocable, is expressly revoked.
- Revocation of trust. **78.** A trust created by will may be revoked at the pleasure of the testator.
- A trust otherwise created can be revoked only—
- (a) where all the beneficiaries are competent to contract—by their consent;
 - (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or
 - (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

- Revocation not to defeat what trustees have duly done. **79.** No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

(Chapter IX —Of certain Obligations in the Nature of Trusts)

CHAPTER IX

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

80. An obligation in the nature of a trust is created in the following cases

Where obligation in nature of trust is created

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein the transferee or legatee must hold such property for the benefit of the owner or his legal representative

Where it does not appear that transferor intended to dispose of beneficial interest

Illustration

(a) A conveys land to B without consideration and declares no trust of any part It cannot consistently with the circumstances under which the transfer is made be inferred that A intended to transfer the beneficial interest in the land B holds the land for the benefit of A

(b) A conveys to B two fields Y and Z, and declares a trust of Y, but says nothing about Z It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z B holds Z for the benefit of A

(c) A transfers certain stock belonging to him into the joint names of himself and B It cannot, consistently with the circumstances under which the transfer is made be inferred that A intended to transfer the beneficial interest in the stock during his life A and B hold the stock for the benefit of A during his life

(d) A makes a gift of certain land to his wife B She takes the beneficial interest in the land free from any trust in favour of A for it may be inferred from the circumstances that the gift was for B's benefit

82 Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration

Transfer of one for consideration paid by another

Nothing in this section shall be deemed to affect the Code of Civil Procedure, section 317 or Act No XI of 1859* (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), section 36

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative

Trust incapable of execution, or trust completely executed without exhausting the trust-property

Illustration

(a) A conveys certain land to B—

“upon trust,” and no trust is declared, or

“upon trust to be thereafter declared” and no such declaration is ever made,

or

upon trusts that are too vague to be executed or

upon trusts that become incapable of taking effect or

“in trust for C,” and C renounces his interest under the trust

In each of these cases B holds the land for the benefit of A

* See now Act 5 of 1908

* Ben Code

(Chapter IX.—Of certain Obligations in the Nature of Trusts.)

(b) A transfers Rs. 10,000 in the four per cents. to B; in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations.

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(b) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

Transfer for
illegal pur-
pose.

Bequest for
illegal pur-
pose.

Bequest of
which revo-
cation is
prevented by
coercion.

Transfer
pursuant to
rescindable
contract.

Debtor
becoming
creditor's re-
presentative.

Advantage
gained by
fiduciary.

(Chapter I A —Of certain Obligations in the Nature of Trusts)

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(d) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(e) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(f) A and B are partners. A dies. B instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g) A, an agent, employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by exercise of undue influence

90. Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted in gaining such advantage.

Advantage gained by qualified owner

Illustrations

(a) A the tenant for life of leasehold property renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A, one of its members, pays nazrana to Government so to be entered as the inamdar of the village of himself and the other members.

(c) A mortgages land to B who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Property acquired with notice of existing contract

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust

(Chapter IX.—Of Certain Obligations in the Nature of Trusts.
Schedule.)

Advantage
secretly
gained by
one of several
compounding
creditors.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive
trusts in cases
not expressly
provided for.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

Obligor's
duties, liabilities
and
disabilities.

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

Saving of
rights of
bona fide
purchasers.

96. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE SCHEDULE.

STATUTE.

Year and Chapter.	Short title.	Extent of repeal.
29 Car. II, c. 3 . . .	The Statute of Frauds . . .	Sections 7, 8, 9, 10 and 11.

ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Number and year	Short title	Extent of repeal
XLVIII of 1866	The Trustees' and Mortgagees Powers Act, 1866	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37. In section * * * 43 the word "trustee" wherever it occurs, and in section 43 the word "management or" and the word "trust-property or"
I of 1877	The Specie Relief Act, 1877	In section 12 the first illustration

THE TRANSFER OF PROPERTY ACT, 1882.

CONTENTS

PREAMBLE

CHAPTER I

PRELIMINARY

SECTIONS.

1. Short title
Commencement.
Extent.
2. Repeal of Acts.
Saving of certain enactments, incidents, rights, liabilities, etc.
3. Interpretation-clause.
4. Enactments relating to contracts to be taken as part of Contract Act.

CHAPTER II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

- (1) *Transfer of Property*, whether movable or immovable.
- "Transfer of property" defined
- What may be transferred.

* The figures "50" and "15" in brackets on the word "and" also, were repealed by the Repealing and Amending Act, 1901 (12 of 1901). See the First Schedule.

SECTIONS.

7. Persons competent to transfer.
8. Operation of transfer.
9. Oral transfer.
10. Condition restraining alienation.
11. Restriction repugnant to interest created.
12. Condition making interest determinable on insolvency or attempted alienation.
13. Transfer for benefit of unborn person.
14. Rule against perpetuity.
15. Transfer to class some of whom come under sections 13 and 14.
16. Transfer to take effect on failure of prior transfer.
17. Transfer in perpetuity for benefit of public.
18. Direction for accumulation.
19. Vested interest.
20. When unborn person acquires vested interest on transfer for his benefit.
21. Contingent interest.
22. Transfer to members of a class who attain a particular age.
23. Transfer contingent on happening of specified uncertain event.
24. Transfer to such of certain persons as survive at some period not specified.
25. Conditional transfer.
26. Fulfilment of condition precedent.
27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.
28. Ulterior transfer conditional on happening or not happening of specified event.
29. Fulfilment of condition subsequent.
30. Prior disposition not affected by invalidity of ulterior disposition.
31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.
32. Such condition must not be invalid.
33. Transfer conditional on performance of act, no time being specified for performance.
34. Transfer conditional on performance of act, time being specified.

Election.

35. Election when necessary.

Apportionment.

36. Apportionment of periodical payments on determination of interest of person entitled.
37. Apportionment of benefit of obligation on severance.

(B) Transfer of Immoveable Property.

SECTIONS.

38. Transfer by person authorised only under certain circumstances to transfer.
39. Transfer where third person is entitled to maintenance.
40. Burden of obligation imposing restriction on use of land, or of obligation annexed to ownership, but not amounting to interest or easement.
41. Transfer by ostensible owner.
42. Transfer by person having authority to revoke former transfer.
43. Transfer by unauthorized person who subsequently acquires interest in property transferred.
44. Transfer by one co-owner.
45. Joint transfer for consideration.
46. Transfer for consideration by persons having distinct interests.
47. Transfer by co-owners of share in common property
48. Priority of rights created by transfer.
49. Transferee's right under policy.
50. Rent *bonâ fide* paid to holder under defective title
51. Improvements made by *bonâ fide* holders under defective titles.
52. Transfer of property pending suit relating thereto.
53. Fraudulent transfer.

CHAPTER III.

OF SALES OF IMMOVABLE PROPERTY.

54. "Sale" defined.
Sale how made.
Contract for sale.
55. Rights and liabilities of buyer and seller.
56. Sale of one of two properties subject to a common charge.

Discharge of Incumbrances on Sale.

57. Provision by Court for incumbrance and sale freed therefrom.

CHAPTER IV.

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES.

58. "Mortgage," "mortgagor," "mortgagee," "mortgage-money," and "mortgage-deed" defined.
Simple mortgage.
Mortgage by conditional sale.
Usufructuary mortgage.
English mortgage.

SECTIONS.

7. Persons competent to transfer.
8. Operation of transfer.
9. Oral transfer.
10. Condition restraining alienation.
11. Restriction repugnant to interest created.
12. Condition making interest determinable on insolvency or attempted alienation.
13. Transfer for benefit of unborn person.
14. Rule against perpetuity.
15. Transfer to class some of whom come under sections 13 and 14.
16. Transfer to take effect on failure of prior transfer.
17. Transfer in perpetuity for benefit of public.
18. Direction for accumulation.
19. Vested interest.
20. When unborn person acquires vested interest on transfer for his benefit.
21. Contingent interest.
22. Transfer to members of a class who attain a particular age.
23. Transfer contingent on happening of specified uncertain event.
24. Transfer to such of certain persons as survive at some period not specified.
25. Conditional transfer.
26. Fulfilment of condition precedent.
27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.
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29. Fulfilment of condition subsequent.
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31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.
32. Such condition must not be invalid.
33. Transfer conditional on performance of act, no time being specified for performance.
34. Transfer conditional on performance of act, time being specified.

Election.

35. Election when necessary.

Apportionment.

36. Apportionment of periodical payments on determination of interest of person entitled.
37. Apportionment of benefit of obligation on severance.

(B) *Transfer of Immoveable Property.*

SECTIONS.

38. Transfer by person authorised only under certain circumstances to transfer.
39. Transfer where third person is entitled to maintenance.
40. Burden of obligation imposing restriction on use of land, or of obligation annexed to ownership, but not amounting to interest or easement.
41. Transfer by ostensible owner.
42. Transfer by person having authority to revoke former transfer.
43. Transfer by unauthorized person who subsequently acquires interest in property transferred.
44. Transfer by one co-owner.
45. Joint transfer for consideration.
46. Transfer for consideration by persons having distinct interests.
47. Transfer by co-owners of share in common property.
48. Priority of rights created by transfer.
49. Transferee's right under policy.
50. Rent *bonâ fide* paid to holder under defective title.
51. Improvements made by *bonâ fide* holders under defective titles.
52. Transfer of property pending suit relating thereto.
53. Fraudulent transfer.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" defined.
Sale how made.
Contract for sale.
55. Rights and liabilities of buyer and seller.
56. Sale of one of two properties subject to a common charge.

Discharge of Incumbrances on Sale.

57. Provision by Court for incumbrance and sale freed therefrom.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. "Mortgage," "mortgagor," "mortgagee," "mortgage-money," and "mortgage-deed" defined.
Simple mortgage.
Mortgage by conditional sale.
Usufructuary mortgage.
English mortgage.

SECTIONS.

59. Mortgage when to be by assurance.

Rights and Liabilities of Mortgagor.

60. Right of mortgagor to redeem.

Redemption of portion of mortgaged property.

61. Right to redeem one of two properties separately mortgaged.

62. Right of usufructuary mortgagor to recover possession.

63. Accession to mortgaged property.

Accession acquired in virtue of transferred ownership.

64. Renewal of mortgaged lease.

65. Implied contracts by mortgagor.

66. Waste by mortgagor in possession.

Rights and Liabilities of Mortgagee.

67. Right to foreclosure or sale.

68. Right to sue for mortgage-money.

69. Power of sale when valid.

70. Accession to mortgaged property.

71. Renewal of mortgaged lease.

72. Rights of mortgagee in possession.

73. Charge on proceeds of revenue-sale.

74. Right of subsequent mortgagee to pay off prior mortgagee.

75. Rights of mesne mortgagee against prior and subsequent mortgagees.

76. Liabilities of mortgagee in possession.

Loss occasioned by his default.

77. Receipts in lieu of interest.

Priority.

78. Postponement of prior mortgagee.

79. Mortgage to secure uncertain amount when maximum is expressed.

80. Tacking abolished.

Marshalling and Contribution.

81. Marshalling securities.

82. Contribution to mortgage-debt.

Deposit in Court.

83. Power to deposit in Court money due on mortgage.

Right to money deposited by mortgagor.

84. Cessation of interest.

Suits for Foreclosure, Sale or Redemption.

85. [Repealed.]

Foreclosure and Sale.

86 to 90. [Repealed.]

Redemption

SECTIONS

91 Who may sue for redemption

92 to 94 [Repealed]

95 Charge of one of several co-mortgagors who redeems

Sale of Property subject to prior Mortgage

96 and 97 [Repealed]

Anomalous Mortgages

98 Mortgage not described in section 54, Chapter (b) (c) (d) (e)

Attachment of Mortgage Property

99 [Repealed]

Charges

100 Charges

101 Extinction of charges

Settlements

102 Settlements of property

103 Notice, etc., to be given

104 Power to make rules

SECTIONS.

- 114. Relief against forfeiture for non-payment of rent.
- 115. Effect of surrender and forfeiture on under-leases.
- 116. Effect of holding over.
- 117. Exemption of leases for agricultural purposes.

CHAPTER VI.

OF EXCHANGES.

- 118. "Exchange" defined.
- 119. Right of party deprived of thing received in exchange.
- 120. Rights and liabilities of parties.
- 121. Exchange of money.

CHAPTER VII.

OF GIFTS.

- 122. "Gift" defined.
Acceptance when to be made.
- 123. Transfer how effected.
- 124. Gift of existing and future property.
- 125. Gift to several, of whom one does not accept.
- 126. When gift may be suspended or revoked.
- 127. Onerous gifts.
Onerous gift to disqualified person.
- 128. Universal donee.
- 129. Saving of donations *mortis causâ* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

- 130. Transfer of actionable claim.
- 131. Notice to be in writing, signed.
- 132. Liability of transferee of actionable claim.
- 133. Warranty of solvency of debtor.
- 134. Mortgaged debt.
- 135. Assignment of rights under marine or fire policy of insurance.
- 136. Incapacity of officers connected with Courts of Justice.
- 137. Saving of negotiable instruments, etc.

THE SCHEDULE.

(Chapter I.—Preliminary.)

'ACT No. IV of 1882.'

[17th February 1882.]

An Act to amend the law relating to the Transfer of Property
by act of Parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY

1. This Act may be called the Transfer of Property Act, 1882

Short title.

It shall come into force on the first day of July 1882

Commence-
ment.

It extends in the first instance to the whole of British India² except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor³ of the Punjab and the Chief Commissioner of British Burma.⁴

Extent.

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend this Act '[or any part

India, 1877, Pt V, p 171, and, 1878, Pt V, p 13, for 79, Pt V, p 100, for the V, p 395; for Proceedings 577, Supplement, p 1690,

ills District, including the ho North Cachar Hills, the Hills Tract, by notification 50 (II of 1880)—see Assam

referring to Lower Burma Commissioner of British

of the Gover
tions 51 (par
effect from 1

see *ibid.* The whole Act has been extended with effect from 1st January, 1915, to the province of Sind—see *ibid.*, p. 195. The whole Act has been extended with effect from 22nd December, 1924, to the whole of Burma except certain specified areas—see Burma Gazette, 1924, Part 1, p. 1082.

The Act has been repealed as to Crown Grants by the Crown Grants Act, 1895 (15 of 1895).

The Act has been repealed or modified to the extent necessary to give effect to the provisions of Madras Act 3 of 1922 in the City of Madras—see s. 13 of Madras

orce in the Pargana of Manpur by the Manpur

s. 2 of the Transfer of Property (Amendment) Act,

1904 (6 of 1904).

[thereof] to the whole or any specified part of the territories under its administration.

¹[And any Local Government may, ²* * * from time to time, by notification in the local official Gazette, exempt,³ either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely:—

Sections 54, paragraphs 2 and 3, 59, 107 and 123.]

⁴[Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877,⁵ under the power ^{III} conferred by the first section of that Act or otherwise.]

Repeal of
Acts.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of
certain
enactments,
incidents,
rights, liabilities,
etc.

- (a) the provisions of any enactment not hereby expressly repealed:
- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:.
- (c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: or
- (d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction:

and nothing in the second Chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.

Interpretation-
on-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

“immoveable property” does not include standing timber, growing crops or grass:

“instrument” means a non-testamentary instrument:

¹ This clause was substituted for the original clause by s. 1 of the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885).

² The words “with the previous sanction of the Governor General in Council” were omitted by s. 2 and Sch. (I) of the Devolution Act, 1920 (38 of 1920).

³ No such exemption has yet been made.

⁴ This clause was added by s. 2 of Act 3 of 1885, and is to be deemed to have been added from the date on which Act 4 of 1882 came into force.

S. 54, paras. 2 and 3, and ss. 59, 107 and 123, extend to every cantonment in British India—see s. 287 of the Cantonments Act, 1924 (2 of 1924).

⁵ See now the Indian Registration Act, 1908 (16 of 1908).

¹["attested" in relation to an instrument, means [and shall be deemed always to have meant]² attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant, but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary]

"registered" means registered in British India under the law³ for the time being in force regulating the registration of documents

"attached to the earth" means—

- (a) rooted in the earth, as in the case of trees and shrubs,
- (b) imbedded in the earth, as in the case of walls or buildings, or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached

⁴["actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent]

and a person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

4 The Chapter and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872

⁵[And sections 51, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1877]

Enactments relating to contracts to be taken as part of Contract Act

¹ This definition was inserted by s. 2 of the Transfer of Property (Amendment) Act, 1928 (27 of 1928)

² These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927)

³ See the Indian Registration Act, 1908 (18 of 1908)

⁴ This paragraph was inserted by s. 2 of the Transfer of Property Act, 1900 (2 of 1900)

⁵ This portion was added by s. 3 of the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885).

(Chapter II.—Of Transfers of Property by act of Parties.)

CHAPTER II.¹

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) *Transfer of Property, whether moveable or immoveable.*

“Transfer of
property”
defined.

5. In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and “to transfer property” is to perform such act.

What may
be transfer-
red.

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue * * * cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military, [air-force]³ and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) ⁴[for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, IX of 1872,] or (3) to a person legally disqualified to be transferee.

⁵[(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee.]

¹ Nothing in Chapter II is to be deemed to affect any rule of Hindu, Muhammadan or Buddhist law—see s. 2, *supra*.

² The words “for compensation for a fraud or for harm illegally caused” were omitted by s. 3 (i) of the Transfer of Property Act, 1900 (2 of 1900).

³ These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

⁴ The words “for an illegal purpose” were omitted and these words were inserted instead of them by s. 3 (ii) of the Transfer of Property Act, 1900 (2 of 1900).

⁵ Cl. (i) was added by s. 4 of the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885).

(Chapter II —Of Transfers of Property by act of Parties)

7 Every person competent to contract and entitled to transferable property or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances to the extent and in the manner allowed and prescribed by any law for the time being in force

8 Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof

Such incidents include where the property is land the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth,

and where the property is machinery attached to land with the moveable parts thereof

and where the property is a house the easements appurtenant to the rent thereof accruing after the transfer and the locks keys bars doors, windows and all other things provided for permanent use therewith

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee) but not arrears of interest accrued before the transfer,

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect

9 A transfer of property may be made without writing in every case Oral transfer in which a writing is not expressly required by law

10 Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from putting to use or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him. Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein

11 Where a transfer of property is made in trust thereon is created exclusively in favour of any person but the transferee shall transfer to the transferee all the interest he has in the property and in the legal incidents thereof and shall not be liable to be compelled to do so if it were not for the direction

(Chapter II.—Of Transfers of Property by act of Parties.)

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

Condition making interest determinable on insolvency or attempted alienation.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Transfer for benefit of unborn person.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Rule against perpetuity.

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Transfer to class some of whom come under sections 13 and 14.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

Transfer to take effect on failure of prior transfer

16. Where an interest fails by reason of any of the rules contained in sections 13, 14 and 15, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer in perpetuity for benefit of public.

17. The restrictions in sections 14, 15 and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Direction for accumulation.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void and the property shall be disposed of as if no accumulation had been directed.

(Chapter II —Of Transfers of Property by act of Parties)

Exception —Where the property is immovable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date, and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed

19 Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested unless a contrary intention appears from the terms of the transfer

A vested interest is not defeated by the death of the transferee before he obtains possession

Explanation —An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person

20 Where, on a transfer of property an interest therein is created for the benefit of a person not then living, he acquires upon his birth unless a contrary intention appear from the terms of the transfer a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth

21 Where on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case on the happening of the event, in the latter, when the happening of the event becomes impossible

Exception —Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent

22 Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age

(Chapter II.—Of Transfers of Property by act of Parties.)

Transfer
contingent
on happening
of specified
uncertain
event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer to
such of cer-
tain persons
as survive at
some period
not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Conditional
transfer.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations.

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Fulfilment of
condition
precedent.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional
transfer to
one person
coupled with
transfer to
another on
failure of
prior disposi-
tion.

27. Where on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

(Chapter II —Of Transfers of Property by act of Parties)

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner

Illustrations

- (a) A transfers property to B, but, in case A should die in his life-time, transfers to C that which he had transferred to B. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.
- (b) A shall execute a certain lease or neglect to do so. To C. B dies. Effect.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration

A transfers a farm to B for her life, and if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

(Chapter II.—Of Transfers of Property by act of Parties.)

Transfer conditional on performance of act, no time being specified for performance.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, time being specified.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

Election when necessary.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

when the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

(Chapter II —Of Transfers of Property by act of Parties)

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom

Exception to the last preceding four rules—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property proposed to be transferred in the same condition as if such act had not been done

Illustration

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof

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(Chapter II.—Of Transfers of Property by act of Parties.)

Apportionment of benefit of obligation on severance.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

Illustrations.

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of Immoveable Property.

Transfer by person authorized only under certain circumstances to transfer.

38. Where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer where third person is entitled to maintenance.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has

(Chapter II—Of Transfers of Property by act of Parties.)

notice of such intention or if the transfer is gratuitous, but not against a transferee for consideration and without notice of the right nor against such property in his hands

Illustration

A, a Hindu, transfers against him for maintenance husband a property and agrees to transfer to her an equal possession as she may elect with, without notice of the claim on the villages transferred to O

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posed
A
was
not
ad-
vised

40. Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

Right of
obligation
imposed
restriction on
use of land.

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon,

Right of obligation
annexed to
ownership
but not
amounting to
interest or
easement

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands

Illustration

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to O, who has notice of the contract. B may enforce the contract against O to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it, provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith

Transfer by
ostensible
owner

42. Where a person transfers any immovable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power

Transfer for
consideration
subject to
revocation

Illustration

A is a house to B and reserves power to revoke the same if, in the opinion of a specified surveyor, it shall make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of A's lease subject to the opinion of the surveyor as to the use of the house having been detrimental to its value.

(Chapter II.—Of Transfers of Property by act of Parties.)

Transfer by unauthorized person who subsequently acquires interest in property transferred.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Transfer by one co-owner.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

Joint transfer for consideration.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Transfer for consideration by persons having distinct interests.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value,

(Chapter II.—Of Transfers of Property by act of Parties.)

and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations

(a) A, owning a moiety, and B and C each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being an eighth share in Lalpura, and an eighth share in

(b) A, being the owner of a property, transfers it to B and C to the reversion, sell A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400

47. Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares. Transfer by co-owners of share in common property.

Illustration

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C

48. Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created. Priority of rights created by transfer

49. Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property. Transferor's right under policy

50. No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits. Rent paid to holder under defective title

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having Improvement made by transferee

(Chapter II.—Of Transfers of Property by act of Parties. Chapter III.—Of Sales of Immoveable Property.)

under defective titles.

a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

Transfer of property pending suit relating thereto.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Fraudulent transfer.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

"Sale" defines

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.

¹ Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

¹ As to limitation to the territorial operation of paragraphs 2 and 3 of s. 54, see s. 1, *supra*. These paragraphs extend to every cantonment in British India—see s. 287 of the Cantonments Act, 1924 (2 of 1924).

(Chapter III.—Of Sales of Immoveable Property)

¹ In the case of tangible immoveable property, or a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties Contract for sale

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold Rights and liabilities of buyer and seller

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover,
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power,
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto,
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place,
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents,
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits,
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(Chapter II.—Of Transfers of Property by act of Parties. Chapter III.—Of Sales of Immoveable Property.)

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Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

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- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property, and the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the completion of the property, to take as much care of the property as an owner of ordinary prudence would take of his property and documents;
- (f) to give, on being so required, and if he does not so require, directs, such possession of the property as may be necessary for the buyer to pay all public charges on the property up to the date of the completion of the property, and to discharge all public charges on the property where the property is situated;

(Chapter III.—Of Sales of Immoveable Property.)

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(Chapter III.—Of Sales of Immoveable Property.)

- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;
 - (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller,
 - (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.
- (G) The buyer is entitled—
- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
 - (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

56. Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Sale of one of two properties subject to common charge.

Discharge of Incumbrances, &c.

57. (a) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution Court

(Chapter III.—Of Sales of Immoveable Property.)

incumbrance of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—
and sale freed therefrom.

- (1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and
- (2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section “Court” means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage,"
"mortgagor,"
"mortgagee,"
"mortgage-money" and
"mortgage-deed" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage.

(c) Where the mortgagor ostensibly sells the mortgaged property— on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

Mortgage by conditional sale.

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary mortgage.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

English mortgage.

(Chapter III.—Of Sales of Immoveable Property.)

incumbrance of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—
and sale freed therefrom.

- (1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and
- (2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section “Court” means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

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"Mortgage,"
"mortgagor,"
"mortgagee,"
"mortgage-
money" and
"mortgage-
deed" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple
mortgage.

(c) Where the mortgagor ostensibly sells the mortgaged property— on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

Mortgage
by condi-
tional sale.

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(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary
mortgage.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

English
mortgage.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

Mortgage
when to be
by assurance.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by ²[a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, ³[Rangoon, Moulmein, Bassein, ⁴(Akyab and in any other town⁵ which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf)], by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

Right of
mortgagor to
redeem.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the

¹ As to limitation to the territorial operation of s. 59, see s. 1, *supra*. S. 59 extends to every cantonment in British India—see s. 287 of the Cantonments Act, 1924 (2 of 1924).

² These words were substituted for the words "an instrument" by s. 3 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

³ These words were substituted for the words "and Rangoon" by s. 4, *ibid*.

⁴ These words were substituted for the words "and Akyab" by the Repealing and Amending Act, 1915 (11 of 1915).

⁵ For notifying Mandalay, see Gazette of India, 1915, Pt. I, p. 1906; for notifying the towns of Bandra, Kurla, and Ghatkoper-Kirol in Bombay Suburban District, see Gazette of India, 1924, Pt. I, p. 1064.

(Chapter IV —Of Mortgages of Immoveable Property and Charges)

mortgagee shall be entitled to reasonable notice before payment or tender of such money

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor

Redemption of portion of mortgaged property

61 A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem

Right to redeem one of two properties separately mortgaged.

Illustration

A the owner of farms mortgages Y to B for Rs on Z A may institute a s

" " or Rs 1 000 A afterwards as to any additional charge mortgage on Z alone

62 In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property,—

Right of usufructuary mortgagor to recover possession.

(a) where the mortgagee is authorized to pay himself the mortgage money from the rents and profits of the property,—when such money is paid,

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money—when the term, if any, prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided

63 Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession

Accession to mortgaged property

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest

Accession acquired in virtue of transferred ownership.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

Renewal of
mortgaged
lease.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Implied con-
tracts by
mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;
- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;
- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

(Chapter IV —Of Mortgages of Immoveable Property and Charges)

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested

66 A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act

Waste by mortgagor in possession

Explanation —A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one third, or, if consisting of buildings, exceeds by one half, the amount for the time being due on the mortgage

Rights and Liabilities of Mortgagee

67 In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold

Right to foreclosure or sale

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale, or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for sale of the property to institute a suit for foreclosure, or
- (c) to authorize the mortgagee of a railway, or in the maintenance of which the public are interested, to institute a suit for foreclosure or sale,
- (d) to authorize a person interested in part of the mortgage money to institute a suit relating to it

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Right to sue
for mortgage-
money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

- (a) where the mortgagor binds himself to repay the same;
- (b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

Power of sale
when valid."

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases ¹[and in no others], namely:—

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist ¹[or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette];
- (b) where the mortgagee is the Secretary of State for India in Council;
- (c) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karachi, ²[Rangoon, Moulmein, Bassein, ³(Akyab or in any other town⁴ which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf)].

¹ These words were inserted by s. 5 of the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885).

² These words were substituted for the words "or Rangoon," by s. 4 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

³ These words were substituted for the words "or Akyab" by the Repealing and Amending Act, 1915 (11 of 1915).

⁴ For notifying the towns of Bandra, Kurla and Ghatkoper-Kirol in the Bombay Suburban District, see Gazette of India, 1924, Pt. I, p. 1064.

(Chapter IV —Of Mortgages of Immoveable Property and Charges)

But no such power shall be exercised unless and until—

- (1) notice in writing requiring payment of the principal money has been served on the mortgagor or on one of several mortgagors, and default has been made in payment of the principal money or of part thereof for three months after such service, or
- (2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised but any person damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances if any to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale and, secondly in discharge of the mortgage money and costs and other money, if any, due under the mortgage, and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof

Nothing in the former part of this section applies to powers conferred before this Act comes into force

The powers and provisions contained in sections 6 to 19 (both inclusive) of the 'Trustees and Mortgagees' Powers Act 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist, '[or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette]

70 If, after the date of a mortgage any accession is made to the mortgaged property, the mortgagee in the absence of a contract to the

Accession
to mortgaged
property

* These words were inserted by s. 5 of the Transfer of Property Act (15-2) Amendment Act, 1885 (3 of 1885)

(Chapter IV.—Of Mortgages of Immovable Property and Charges.)

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- (2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

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70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall be deemed to have accepted the accession as part of the mortgage. These words were inserted by s. 6 of the Transfer of Property Act (1899) Amendment Act, 1899 (3 of 1899).

Transfer of Property. — [1882: Act IV. Chapter IV.—Of Mortgages of Immoveable Property and Charges.]
 contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

- (a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.
 (b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

- (a) for the due management of the property and the collection of the rents and profits thereof;
 (b) for its preservation from destruction, forfeiture or sale;
 (c) for supporting the mortgagor's title to the property;
 (d) for making his own title thereto good against the mortgagor; and
 (e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent. per annum. Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

Renewal of mortgaged lease.

Rights of mortgagee in possession.

(Chapter IV.—Of Mortgages of Immovable Property and Charges.)

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereof of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Charge on proceeds of revenue-sale.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law¹ for the time being in force regulating the registration of documents) the subsequent mortgagees shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right of subsequent mortgagee to pay off prior mortgagee

75. Every second or other subsequent mortgagee has so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mesne mortgagee against prior and subsequent mortgagees.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property.—

Liabilities of mortgagee in possession.

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(b) he must use his best endeavours to collect the rents and profits thereof;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;

(e) he must not commit any act which is destructive or permanently injurious to the property;

¹ See the Indian Registration Act, 1908 (16 of 1905).

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;
- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

Loss
occasioned by
his default. If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

Receipts in
lieu of
interest. 77. Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

Postpone-
ment of
prior
mortgagee. 78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

(Chapter IV —Of Mortgages of Immoveable Property and Charges)

79 If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debts not exceeding the maximum, though made or allowed with notice of the subsequent mortgage

Mortgage to secure uncertain amount when maximum is expressed.

Illustration

A mortgages Sultanpur to his bankers, B & Co, to secure the balance of his account with them to the extent of Rs 10,000. A then mortgages Sultanpur to C, to secure Rs 10,000. C having notice of the mortgage to B & Co, and C gives notice of his mortgage. At the date of the second mortgage, the balance of the account of A with B & Co subsequently advanced to him exceeds the sum of Rs 10,000. C has a priority over B.

80 No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage shall thereby require any priority in respect of his original security. And except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance

Tacking abolished.

Marshalling and Contribution

81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property

Marshalling of securities

82 Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute ratably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage

Contribution to mortgage-debt.

Where of two properties belonging to the same owner one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute ratably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;
- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

Loss
occasioned by
his default. If

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

**Receipts in
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77. Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

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ment of
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mortgagee.**

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

(Chapter IV—Of Mortgages of Immoveable Property and Charges)

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Mortgage to secure uncertain amount when maximum is expressed

Illustration

A —————
 account to sec —
 to B —

—kers, B & Co, to secure the balance of his 10,000 A then mortgages Sultanpur to C, the mortgage to B & Co., and C gives notice At the date of the second mortgage, the balance due to B & Co does not exceed Rs 5,000 B & Co subsequently advance to A sums making the balance of the account against him exceed the sum of Rs 10,000 B & Co are entitled, to the extent of Rs 10,000, to priority over C

80 No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage shall thereby acquire any priority in respect of his original security And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance

Tacking
abolished.

Marshalling and Contribution

81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

Marshalling securities

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute ratably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Contribution
to mortgage-
debt

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is in the absence of a contract to the contrary, liable to contribute to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee.

Deposit in Court.

Power to
deposit in
Court money
due on
mortgage.

83. At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to
money
deposited by
mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law¹ for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Cessation of
interest.

84. When mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure. Sale or Redemption.

85. [*Parties to suits for foreclosure. sale and redemption.*] Repealed by the Code of Civil Procedure, 1908 (Act V of 1908),² s. 156 and Sch. V.

Foreclosure and Sale.

[86 to 90.] Repealed by the Code of Civil Procedure, 1908 (Act V of 1908),² s. 156 and Sch. V.

¹ See the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VI, rule 15.
² Cf. Act 5 of 1908, Sch. I, Order XXXIV.

(Chapter IV—Of Mortgages of Immoveable Property and Charges)

Redemption

91 Besides the mortgagor, any of the following persons may redeem or institute a suit for redemption of, the mortgaged property —

Who may
sue for
redemption

- (a) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in or charge upon the property,
- (b) any person having any interest in or charge upon the right to redeem the property
- (c) any surety for the payment of the mortgage debt or any part thereof,
- (d) the guardian of the property of a minor mortgagor on behalf of such minor,
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot
- (f) the judgment creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property,
- (g) a creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property

[92 to 94] Repealed by the Code of Civil Procedure 1908 (Act I of 1908)¹, s 156, and Sch V

95 Where one of several mortgagors redeems the mortgaged property and obtains possession thereof he has a charge on the share of each of the other co mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession

Charge of
one of several
co mort-
gagors who
redeems

Sale of property subject to prior Mortgage

[96 and 97] Repealed by the Code of Civil Procedure 1908 (Act I of 1908)²

Anomalous Mortgages

98 In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale an usufructuary mortgage or an English mortgage or a combination of the first and third or the second and third of such forms the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage deed and so far as such contract does not extend by local usage

Mortgage
not described
in section
53 clauses
(b) (c), (d)
and (e)

¹ Cf. Act 5 of 1905 Sch I, Order XXXIV
² Cf. *ibid*, rules 12 and 13

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

99. [Attachment of mortgaged property]. Repealed by the Code of Civil Procedure, 1908 (Act V of 1908),¹ s. 156 and Sch. V.

Charges.

Charges.

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 * * * shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

Extinguish-
ment of
charges.

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Notice and Tender.

Service or
tender on or
to agent.

102. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring

¹ Cf. Act 5 of 1903, Sch. I, Order XXXIV, rule 14.

² The words "and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property" were repealed by s. 156 and Sch. V of the Code of Civil Procedure, 1903 (Act 5 of 1903).

(Chapter IV —Of Mortgages of Immoveable Property and Charges
Chapter V —Of Leases of Immoveable Property)

to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount

103 Where under the provisions of this Chapter a notice is to be served on or by or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract such notice may be served, or tender or deposit made accepted or taken, by the legal curator of the property of such person but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender or making or taking out of Court such deposit and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract¹ and the provisions of Chapter XXXI of the Code of Civil Procedure² shall so far as may be apply to such application and to the parties thereto and to the guardian appointed thereunder

Notice, etc., to or by person incompetent to contract

104 The High Court may from time to time make rules consistent with this Act for carrying out in itself and in the Courts of Civil Judicature subject to its superintendence the provisions contained in this Chapter

Power to make rules

CHAPTER V

OF LEASES OF IMMOVEABLE PROPERTIES

105 A lease of immoveable property is a transfer of a right to enjoy such property made for a certain time express or implied or in perpetuity in consideration of a price paid or promised or of money or share of crops service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms

Lease defined

The transferor is called the lessor the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent

Lessor lessee, premium and rent defined.

¹ As to persons competent to contract see ss 11 and 12 of the Indian Contract Act 1872 (3 of 1872)

² See now the Code of Civil Procedure 1908 (Act 5 of 1908), Sch. I, Order XXXII

³ For rules made by different High Courts see different local rules and orders

(Chapter V.—Of Leases of Immoveable Property.)

Duration of
certain leases
in absence of
written con-
tract or local
usage.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor, or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence. or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Leases how
made.

¹107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

²[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession :

Provided that the Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification³ in the local official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]

Rights and
liabilities of
lessor and
lessee.

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

(A) *Rights and Liabilities of the Lessor.*

- (a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

¹ As to limitation to the territorial operation of s. 107, see s. 1, *supra*. S. 107 extends to every cantonment in British India—see s. 287 of the Cantonments Act, 1924 (2 of 1924).

² This paragraph and proviso were substituted for the original paragraph by s. 5 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

³ For notifications by the local Governments, see different local rules and orders.

(Chapter V.—Of Leases of Immovable Property.)

- (b) the lessor is bound on the lessee's request to put him in possession of the property:
- (c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee

- (d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease
- (e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void.

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision

- (f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor
- (g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor.
- (h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth: provided he leaves the property in the state in which he received it.
- (i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative

(Chapter V.—Of Leases of Immovable Property.)

is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition ; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor :

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were

(Chapter V—Of Leases of Immoveable Property)

his own, but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted or commit any other act which is destructive or permanently injurious thereto.

(p) he must not, without the lessor's consent, erect on the property any permanent structure except for agricultural purposes.

(q) on the determination of the lease the lessee is bound to put the lessor into possession of the property.

109 If the lessor transfers the property leased or any part thereof, or any part of his interest therein, the transferee in the absence of a contract to the contrary shall possess all the rights and if the lessee elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him.

Rights of
lessor's transferee

Provided that the transferee is not entitled to sue for rent due before the transfer, and that, if the lessee not having reason to believe that such transfer has been made pays rent to the lessor the lessor shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred and, in case they disagree such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110 Where the time limited by a lease of immoveable property is expressed as commencing from a particular day in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Exclusion of day on which term commences

Where the time so limited is a year or a number of years in the absence of an express agreement to the contrary the lease shall last during the whole anniversary of the day from which such time commences.

Duration of lease for a year

Where the time so limited is expressed to be terminable before its expiration and the lease omits to mention at whose option it is so terminable the lessee and not the lessor shall have such option.

Option to determine lease

111 A lease of immoveable property determined—

(a) by expiry of the time limited thereby

Determination of lease

(Chapter V.—Of Leases of Immoveable Property.)

- (b) where such time is limited conditionally on the happening of some event—by the happening of such event:
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:
- (f) by implied surrender:
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease:
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

Waiver of
forfeiture.

112. A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

Waiver of
notice to
quit.

113. A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

(Chapter V.—Of Leases of Immoveable Property)

Illustrations

(a) A, the lessor, gives B, the lessee notice to quit the property leased. The notice expires. B tenders and A accepts rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non payment of rent and the lessor sues to eject the lessee, if, at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture, and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture for non payment of rent.

115. The surrender express or implied of a lease of immoveable property does not prejudice an under lease of the property or any part thereof previously granted by the lessee on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease, but unless the surrender is made for the purpose of obtaining a new lease the rent payable by and the contracts binding on the under lessee shall be respectively payable to and enforceable by the lessor.

Effect of surrender and forfeiture on under leases.

The forfeiture of such a lease annuls all such under-leases except where such forfeiture has been procured by the lessor in fraud of the under-lessees or relief against the forfeiture is granted under section 114.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee and the lessor or his legal representative accepts rent from the lessee or under-lessee or otherwise is content to his continuing in possession the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month according to the purpose for which the property is leased as specified in section 106.

Effect of holding over.

Illustrations

(a) A lets a house to B for five years. B and let the house to C at a monthly rent of Rs. 100. The five years expire but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this Chapter apply to leases for agricultural purposes except in so far as the Local Government may

Exemption of leases for agricultural purposes

* The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (33 of 1920)

(Chapter V.—Of Leases of Immovable Property. Chapter VI.—Of Exchanges. Chapter VII.—Of Gifts.)

* may by ¹notification published in the local official Gazette declare all or any of such provisions to be so applicable ²[in the case of all or any of such leases], together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

“Exchange” defined.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an “exchange”.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

Right of party deprived of thing received in exchange.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

Rights and liabilities of parties.

120. Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

“Gift” defined.

122. “Gift” is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.

Such acceptance must be made during the life-time of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

¹ For notification issued by the Government of Bombay under this section, see Government of Bombay Gazette, 1910, Pt. I, p. 59. For notification as to Sind, see *ibid.*

² These words were inserted by s. 6 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

(Chapter VII.—Of Gifts.)

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. Transfer now effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. A gift comprising both existing and future property is void as to the latter. Gift of existing and future property.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted. Gift to several, of whom one does not accept.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be. When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully. Onerous gift.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

¹ As to limitation to the territorial operation of s. 123, see s. 1, *supra*. S. 123 extends to every cantonment in British India—see s. 237 of the Cantonments Act, 1924 (2 of 1924).

(Chapter VII.—Of Gifts. Chapter VIII.—Of Transfers of Actionable Claims.)

Onerous gift
to disquali-
fied person.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

Universal
donee.

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Saving of
donations
mortis causa
and Muham-
madan law.

129. Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section 123, any rule of Hindu or Buddhist law.

CHAPTER VIII.¹

OF TRANSFERS OF ACTIONABLE CLAIMS.

Transfer of
actionable
claim.

130. (1) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, and ²[notwithstanding anything contained in section 123] shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

¹ This Chapter was substituted for the original Chapter VIII by the Transfer of Property Act, 1900 (2 of 1900).

² These words were inserted by s. 2 of the Transfer of Property (Amendment) Act, 1925 (38 of 1925).

(Chapter VIII —Of Transfers of Actionable Claims)

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Illustrations

(i) A owes money to B who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132.

131 Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign by the transferee or his agent and shall state the name and address of the transferee. Notice to be in writing, signed

132 The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer. Liability of transferee of actionable claim

Illustrations

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133 Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer and is limited where the transfer is made for consideration to the amount or value of such consideration. Warranty of solvency of debtor

134 Where a debt is transferred for the purpose of securing an existing or future debt the debt so transferred if received by the transferor or recovered by the transferee is applicable first in payment of the costs of such recovery secondly in or towards satisfaction of the amount for the time being secured by the transfer and the residue if any, belongs to the transferor or other person entitled to receive the same. Mortgaged debt

135 Every assignment by endorsement or other writing of a policy of marine insurance or of a policy of insurance against fire in which the property in the subject insured shall be absolutely vested at the date of the assignment shall have transferred and vested in him all rights of Assignment of rights under marine or fire policy of insurance

(Chapter VIII.—Of Transfers of Actionable Claims. Schedule.)

suit as if the contract contained in the policy had been made with himself.

Incapacity
of officers
connected
with Courts
of Justice.

136. No Judge, legal practitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim, so dealt with by him as aforesaid.

Saving of
negotiable
instruments,
etc

137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

THE SCHEDULE.

Year and chapter.	Subject.	Extent of repeal.
(a) STATUTES.		
27 Hen. VIII, c. 10.	Uses	The whole.
13 Eliz., c. 5	Fraudulent conveyances	The whole.
27 Eliz., c. 4	Fraudulent conveyances	The whole.
4 Wm. and Mary. c. 16 .	Clandestine mortgages	The whole.
(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.		
IX of 1842	Lease and release	The whole.
XXXI of 1854	Modes of conveying land	Section 17.
XI of 1855	Mesne profits and improvements . .	Section 1 ; in the title, the words “to mesne profits and,” and in the preamble “to limit the liability for mesne profits and”.

THE SCHEDULE—*contd*

Number and year	Subject	Extent of repeal.
(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL— <i>contd</i>		
XXVII of 1866	Indian Trustees Act	Section 31
IV of 1872	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806
XX of 1875	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806
XVIII of 1876	Oudh Laws Act	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877	Specific Relief	In sections 35 and 36, the words "in writing"
(c) REGULATIONS		
Bengal Regulation I of 1798	Conditional sales	The whole Regulation.
Bengal Regulation XVII of 1806	Redemption	The whole Regulation
Bombay Regulation V of 1827.	Acknowledgment of debts; Interest, Mortgages in possession.	Section 15

ACT No. VII of 1882.¹

[24th February 1882.]

An Act to amend the law relating to Powers-of-Attorney.

For the purpose of amending the law relating to Powers-of-Attorney; It is hereby enacted as follows:—

1. This Act may be called the Powers-of-Attorney Act, 1882.

Short title

¹ For Statement of Object's and Reasons, see Gazette of India, 1881, Pt. V, p. 1473; for Proceedings in Council, see *ibid*, 1881, Supplement, p. 1402, and *ibid*, 1882, Supplement, p. 204

Act 7 of 1882 has been declared in force in the Sonthal Parganas by s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872) as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B & O Code.

Local extent.
Commence-
ment.
Execution
under power-
of-attorney.

It applies to the whole of British India;
and it shall come into force on the first day of May 1882.

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

Payment by
attorney
under power,
without
notice of
death, etc.,
good.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

Deposit of
original
instruments
creating
powers-of-
attorney.

4. (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

¹(e) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (a), (b) and (c)².

¹ For instance of rules made and fees prescribed under this clause, see *Mad. R. & O.*; *Bom. R. & O.*; and *Burma Rules Manual*.

² For *Madras High Court Fees Rules* made under this Act and the *Indian High Courts Act, 1861* (24 & 25 Vict., c. 104), see *Fort St. George Gazette, 1909, Part II, p. 1709*.

(f)¹ * * * * *
(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force

5. A married woman whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non testamentary instrument or doing any other act which she might herself execute or do, and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto. Power of attorney of married women

This section applies only to instruments executed after this Act comes into force

6 [Act XXVIII of 1866 s 39, repealed] Rep by the Repealing and Amending Act, 1891 (VII of 1891)

ACT No VIII of 1882²

[2nd March 1882]

An Act to amend the Indian Penal Code

For the purpose of amending the Indian Penal Code, It is hereby Preamble enacted as follows —

1. In the second clause of section 40 of the said Code, before the figure " 109 " the figures " 64, 65, 66, 71 " shall be inserted³ Amendment of section 40, clause 2, of Indian Penal Code

2 In section 64 of the said Code, for the first twelve words the following shall be substituted, namely — Amendment of section 64 of same Code

" In every case of an offence punishable with imprisonment as well as fine in which the offender is sentenced to a fine, whether with or without imprisonment,

¹ Cl (f) was repealed by the Lower Burma Courts Act, 1900 (6 of 1900), s 48 and Sch II

² Short title "The Indian Penal Code Amendment Act, 1882" See the Indian Short Titles Act 1897 (41 of 1897)

³ For Statement of Objects and Reasons see Gazette of India 1881, Pt V, p 151, for Proceedings in Council, see *ibid*, 1881, Supplement, p 250, and *ibid*, 1882 Supplement p 329

Act 8 of 1882 has been declared in force in the Sonthāl Parganas by s 3 of the Sonthāl Parganas Settlement Regulation (3 of 1872) as amended by the Sonthāl Parganas Justice and Law Regulation, 1899 (3 of 1899) B and O Code. As amending the Indian Penal Code it is in force in Upper Burma generally (except the Shan States), see the Burma Laws Act 1885 (17 of 1885) s 4 (1) and Sch I

⁴ For full text see notice in the Indian Criminal Law Amendment Act 1888 (1 of 1888)

“ and in every case of an offence punishable¹ with fine only, in which the offender is sentenced to a fine.”

Amendment
of section 67
of same Code.

3. In section 67, after the words “ fine only,” the words “ the imprisonment which the Court imposes in default of payment of the fine shall be simple, and ” shall be inserted.

Addition to
section 71 of
same Code .

4. To section 71 of the said Code the following clause shall be added :—

“ Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

“ where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

“ the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.”

Amendment
of section 73
of same Code.

5. In section 73 of the said Code, for the words “ be less than a ” the words “ shall not exceed one ” shall be substituted.

New
Exception to
section 214
of same
Code.

6. In section 214 of the said Code, for the *Exception* the following shall be substituted, namely :—

“ *Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.”

Amendment
of section 309
of same Code.

7. In section 309 of the said Code, for the last seven words the words “ or with fine or with both ” shall be substituted.

Amendment
of section 335
of same Code.

8. In section 335 of the said Code, before the words “ causes ” the word “ voluntarily ” shall be inserted.

Amendment
of section 410
of same Code.

9. In section 410 of the said Code, after the words “ designated as ‘ stolen property ’ ” the following words shall be inserted, namely :—
“ whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India ; ” and the words “ offence of ” shall be omitted.

Addition to
section 435 of
same Code.

10. In section 435 of the said Code, after the words “ or upwards ” the following words shall be inserted, namely :—

“ or (where the property is agricultural produce) ten rupees or upwards.”

Local extent.
Commence-
ment.

11. This Act extends to the whole of British India ; and shall come into force on the first day of January 1883.

¹ For further amendment, see the Indian Criminal Law Amendment Act, 1886: (10 of 1886).

THE INDIAN SALT ACT, 1882.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Power to extend Act.
2. Repeal of enactments.
3. Interpretation-clause.
4. Powers of Commissioner of Division by whom to be exercised.
5. Commissioner of Northern India Salt-revenue.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

6. Power of Governor General in Council—
to regulate manufacture and refining of salt and saltpetre;
to fix fees for licenses;
to regulate the collection of duties;
to regulate possession of salt in vicinity of places where saltpetre is manufactured;
to regulate possession of salt in vicinity of places where salt is manufactured.

CHAPTER III.

DUTY AND PRICE OF SALT.

7. Power of Governor General in Council—
to impose a duty on manufacture of salt;
to reduce or remit duties;
to fix minimum price of salt excavated, etc., by Government.
8. Power of Local Government to fix minimum price of salt excavated, etc.

CHAPTER IIIA.

INDUS PREVENTIVE LINE.

SECTIONS.

8A. Power to define zones and establish chains of posts.

8B. Effect of defining a zone and establishing a chain of posts.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

9. Penalties.

10. Punishment on second and subsequent convictions.

11. Charge by whom to be preferred.

Limitation.

Jurisdiction.

12. Confiscation of articles in respect of which offence committed.

13. Power to levy additional duty as penalty.

14. Punishment for connivance at offences mentioned in section 9.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

15. Power to search places where article is manufactured under license.

16. Power to detain suspected person and to seize goods liable to confiscation.

17. Power to arrest.

18. Procedure of officer having reason to believe unlawful manufacture.

Power to enter and search.

19. Failure of Police-officer to attend.

20. Report of arrest, seizure and search.

21. Procedure in respect of articles seized.

22. Procedure on detention of articles subject to additional duty.

23. Procedure in respect of person arrested.

24. Officers required to assist Salt-revenue-officers.

25. Vexatious search, seizure, etc., by Salt-revenue-officer.

26. Power to regulate seizures and disposal of things seized.

CHAPTER VI

MISCELLANEOUS

SECTIONS

- 27 Power to prohibit import and transit of salt
 28 Further matter for which Governor General in Council may make rule
 29 Publication of rule
 30 Power to confer power of Assistant Commissioner and Salt-revenue officers
 31 [*Repealed*]

THE SCHEDULE — ENACTMENTS REFERRED

ACT No. XII of 1882¹

[10th March 1882]

An Act for regulating the duty on Salt and for other purposes

WHEREAS it is expedient to amend the law relating to the levy of duty Preamble
 on salt and to the import and transit of salt and the manufacture of salt
 and saltpetre into, over and in British India It is hereby enacted as
 follows —

CHAPTER I

PRELIMINARY

1 This Act may be called the Indian Salt Act 1882 * * * * Short title.

This section sections 2 7 and 8 and so much of this Act as refers to Local extent.
 offences against any of its provisions or against any rule made under it,
 extend to the whole of British India

¹ For Proceedings in Council see Gazette of India 1882 Supplement p 201 and Extra Supplement, p 34

Act 12 of 1882 has been declared in force in the South Malabar Parganas by the South Malabar Parganas Settlement Regulation 1872 (3 of 1872) as amended by the South Malabar Parganas Justice and Laws Regulation 1879 (3 of 1879) B and O Code and in British Baluchistan, see the British Baluchistan Laws Regulation 1913 (2 of 1913), s. 3, Bal Code

So much of the Act as was in force in Lower and Upper Burma has been repealed by Burma Act 2 of 1917, Bur Code

The words "and it shall come into force at once" were repealed by the Repealing and Amending Act 1914 (10 of 1914)

(Chapter. I.—Preliminary.)

the rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Punjab and the Chief Commissioners of Oudh, the Central Provinces and Ajmere and Merwara, ¹* * * to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor General in Central India;

Power to
extend Act.

and any portion of this Act, other than the portions specified in the second paragraph of this section, may be extended², by order of the Governor General in Council published in the Gazette of India, to any part of British India other than the territories, ³* * * and Districts mentioned in the third paragraph of this section.

Repeal of
enactments.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published and powers conferred under any such enactment and now in force shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published and conferred hereunder.

Interpreta-
tion-clause :

3. In this Act, unless there be something repugnant in the subject or context,—

“ the said
territories; ”

the expression “ the said territories ” means the territories to which the section of this Act, in which that expression occurs, for the time being extends;

“ Assistant
Commis-
sioner; ”

“ Assistant Commissioner ” means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by

¹ The words “ to the Province of Sindh ” were repealed by Act 20 of 1884 which was brought into force on 2nd October 1890; Bom. Gazette, 1890, Pt. I, p. 954.

² Under this power—

- (1) the Act with certain exceptions has been extended to the Districts of the Orissa Division, see Notification No. 769, dated 11th February 1888, Gazette of India, 1888, Pt. I, p. 67: a portion of this Notification was rescinded by Notification No. 2756-S.R., dated 21st May 1901, *ibid*, Pt. I, p. 337;
- (2) the Act with certain exceptions has been extended to the Districts of Howrah and Noakhali in Bengal, and the rules applicable to Orissa referred to in (1) extended thereto: Gazette of India, 1901, Pt. I, p. 139; Notification Nos. 1142-4 S. R., dated 2nd March 1901;
- (3) the Act with certain exceptions has been extended to Calcutta (as defined by Ben. Act 3 of 1899), and to the area included within two miles from its limits: Gazette of India, 1901, Pt. I, p. 233: Notification No. 1907-S. R., dated 10th April 1901;
- (4) the Act with certain exceptions has been extended to the Districts of 24-Parganas (except Calcutta), Midnapur, Khulna, Backergunge and Chittagong; Gazette of India, 1898, Pt. I, p. 376, Notification No. 1594-S. R., dated 9th April 1898, and Gazette of India, 1901, Pt. I, p. 337; Notification No. 2756-S. R., dated 21st May 1901, rescinding a portion thereof.

³ The word “ Province ” was repealed by Act 20 of 1884; see foot-note (1) above.

(Chapter I—Preliminary Chapter II—Manufacture and Refining of Salt and Saltpetre)

the Local Government with the powers of an Assistant Commissioner under this Act¹,

“Salt-revenue-officer” means any officer of the Northern India Salt Department and also includes any person invested² by the Local Government with any of the powers of a Salt-revenue-officer under this Act, “Salt revenue officer.”

“saltpetre” includes rasai, sajji and all other substances manufactured from saline earth, and kharium and every form of sulphate or carbonate of soda, and “saltpetre.”

“manufacture of salt” includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence, “manufacture of salt.”

“Kohat salt” means salt produced in the district of Kohat in the Punjab “Kohat salt.”

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may in places where there is no such Commissioner, be exercised and performed by such officer³ as the Governor General in Council may from time to time appoint in this behalf Powers of Commissioner of Division by whom to be exercised.

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor General in Council Commissioner of Northern India Salt revenue.

CHAPTER II

MANUFACTURE AND REFINING OF SALT AND SALTPETRE

6. The Governor General in Council may, from time to time, by rule—

- (a) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories; Power of Governor-General in Council—to regulate manufacture and refining of salt and saltpetre.

¹ For persons so invested in certain Districts in Bengal, see Ben. R. and O.

² Police-officers in the United Provinces have been invested with the powers of a Salt-revenue-officer, see U. P. R. and O.

³ This definition of “Kohat salt” in s. 1 of the Indian Salt Act (19 of 1904)

power on the Revenue Commissioner of the North-Gazette of India, 1901, Pt. 1, p. 950, and on the Indian Gazette of India, 1914, Pt. 1, p. 1963

(Chapter II.—*Manufacture and Refining of Salt and Saltpetre.*
Chapter III.—*Duty and Price of Salt.*)

to fix fees
for licenses ;

- (b) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned :—

	Rs.
License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining	50
License to manufacture saltpetre	2
License to manufacture sulphate of soda (<i>khárinún</i>) by solar heat in evaporating pans	10
License to manufacture sulphate of soda (<i>khárinún</i>) by artificial heat	2
License to manufacture other saline substances	2

to regulate
the collection
of duties ;

- (c) determine the manner, time and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories ;

to regulate
possession
of salt in
vicinity of
places where
saltpetre is
manufactured ;

- (d) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession; storage and sale of salt within such area ;

to regulate
possession
of salt in
vicinity of
places where
salt is manu-
factured.

- (e) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area.

CHAPTER III.

DUTY AND PRICE OF SALT.

Power of
Governor
General in
Council—
to impose a
duty on
manufacture
of salt ;

7. The Governor General in Council may from time to time, by rule consistent with this Act,—

to reduce or
remit duties ;

- ¹(a) impose a duty, not exceeding three rupees per maund of 82½ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India ;
- ²(b) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted ;

to fix mini-
mum price
of salt ex-
cavated, etc.,
by Govern-
ment

- (c) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold.

¹ The salt duty is now fixed annually by the Indian Finance Act.

² For notifications remitting the duty on salt, see Genl. R. & O., Vol. II, pp. 297-310.

(Chapter III —Duty and Price of Salt Chapter IIIA —Indus Preventive Line)

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds

8. Subject to any general rules or special orders which the Governor General in Council may, from time to time, make in this behalf the Local Government may from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured or sold by or on behalf of such Local Government shall be sold ¹

Power of Local Government to fix minimum price of salt excavated, etc

CHAPTER IIIA *

INDUS PREVENTIVE LINE

8A (1) The Governor General in Council may from time to time, by rule —

Power to define zones and establish chains of posts

(a) define a zone of country not exceeding fifteen miles in breadth—

(i) along any portion of the river Indus and at such distance therefrom as he deems expedient, or

(ii) in any tract extending from that river to the western frontier of the Punjab

(b) extend any such zone so as to include any ferry, or any portion of a railway, canal or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and

(c) within such a zone establish a chain of posts extending along the zone

(2) The establishment of a chain of posts under clause (c) of subsection (1) shall be deemed to be a public purpose within the meaning of the Land Acquisition Act, 1870 ²

8B When a zone has been defined and a chain of posts established under section 8A, the Governor General in Council may from time to time by rule —

Effect of defining a zone and establishing a chain of posts

(i) prohibit any person except upon such conditions as may be prescribed in the rule from having in his possession any Kohat salt within the limit of the zone, and,

(ii) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate

¹ For notifications fixing the price of salt at—

(1) Aden see Bom R & O

(2) Tuticorin see Mal R & O

² Ch IIIA was inserted by s 2 of the Indian Salt Act (1882) Amendment Act, 1887 (10 of 1887)

³ See now the Land Acquisition Act, 1894 (1 of 1894)

(Chapter IIIA.—*Indus Preventive Line.* Chapter IV.—*Offences against the Salt-revenue.*)

the passage of traffic across such chain, and provide for the searching of all persons and things crossing and being taken across such chain.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

Penalties

9. Whoever commits any of the following offences (namely):—

- (a) does anything in contravention of this Act or of any rule made hereunder;
- (b) evades payment of any duty or charge payable under this Act or any such rule, or
- (c) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of any of the offences mentioned XLV in clauses (a) and (b) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue-officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

Punishment on second and subsequent convictions.

10. Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875,¹ or under any enactment repealed by VIII. that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9;

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

Charge by whom to be preferred.

11. A charge of an offence under section 9 ²* * * shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue-officer not inferior in rank to a Sub-Inspector,

Limitation.

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

¹ Act 8 of 1875 is repealed by this Act, see Sch., *infra*.

² The words and figures "or under section 11 of the Inland Customs Act, 1875," were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

(Chapter IV.—Offences against the Salt-revenue.)

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

12. All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation. Confiscation of articles in respect of which offence committed.

When the article seized exceeds five sers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any Salt-revenue-officer, or on such enquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

13. The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue-officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act. Power to levy additional duty as penalty.

The imposition of every such penalty shall be at once reported, if the salt, in respect of which an offence has been committed, exceeds five sers in weight, to the Commissioner of the Division in which such penalty is imposed, and, if such salt does not exceed five sers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

14. Any zamindar or other proprietor of land, and any agent of a zamindar or proprietor of land, who wilfully connives at any offence mentioned in section 9, shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both. Punishment for connivance at offences mentioned in section 9.

(Chapter IIIA.—*Indus Preventive Line.* Chapter IV.—*Offences against the Salt-revenue.*)

the passage of traffic across such chain, and provide for the searching of all persons and things crossing and being taken across such chain.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

Penalties

9. Whoever commits any of the following offences (namely):—

- (a) does anything in contravention of this Act or of any rule made hereunder;
- (b) evades payment of any duty or charge payable under this Act or any such rule, or
- (c) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of any of the offences mentioned XLV in clauses (a) and (b) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue-officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

Punishment on second and subsequent convictions.

10. Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875,¹ or under any enactment repealed by VIII of that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9;

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

Charge by whom to be preferred.

11. A charge of an offence under section 9 shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue-officer not inferior in rank to a Sub-Inspector,

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

¹ Act 8 of 1875 is repealed by this Act, see Sch., *infra*.

² The words and figures "or under section 11 of the Inland Customs Act, 1875," were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

Limitation.

Chapter IV.—Offences against the Salt-revenue

All such offences shall be tried by a Magistrate exercising powers not greater than those of a Magistrate of the second class.

12. All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five seers in weight the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any Salt-revenue-officer, or on such enquiry as he thinks fit to make that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five seers in weight the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five seers and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

13. The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue-officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may provide that an offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose on such salt an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

The imposition of every such penalty shall be at once reported, if the salt, in respect of which an offence has been committed, exceeds five seers in weight to the Commissioner of the Division in which such penalty is imposed and if such salt does not exceed five seers in weight, to the Assistant Commissioner.

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest.)

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

Power to search places where article is manufactured under license.

15. Any Salt-revenue-officer empowered in this behalf by the Local Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to detain suspected person and to seize goods liable to confiscation.

16. Any Salt-revenue-officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act;

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

Power to arrest.

17. Any Salt-revenue-officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

Procedure of officer having reason to believe unlawful manufacture.

18. Whenever any Salt-revenue-officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place, such officer shall first record in writing (so far as may be practicable) (a) the name, residence and calling of the informant (if any), (b) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored, (c) the name of the person by or for whom the salt or saltpetre is so manufactured, refined or stored, and (d) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored;

and may then summon in writing the officer in charge of the police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him;

Power to enter and search.

and may then, after sunrise and before sunset (but always in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored;

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons con-

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest.)

cerned in the manufacture, refinement or storing of such salt or saltpetre or in the concealing thereof

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.¹

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.²

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.³

19. Any officer in charge of a police-station who, on application in writing made by a Salt-revenue-officer to attend for any of the purposes specified in section 18 refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

Failure of
Police officer
to attend

20. Whenever a Salt-revenue-officer under the rank of Assistant Commissioner arrests under this Act any person,

Report of
arrest, seiz-
ure and
search

or seizes any article as liable to confiscation under this Act,

or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate) within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior, for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section 18 shall report the same to his official superior.

¹ See now the provisions of 4th of the Code of Criminal Procedure, 1862 (Act 5 of 1862).

² Cf. s. 103, *ibid*.

³ Cf. s. 12, *ibid*.

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest.)

Procedure
in respect
of articles
seized.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12.

If the articles seized does not exceed five sers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

Procedure
on detention
of articles
subject to
additional
duty.

22. Any article in respect of which a penalty is imposed under section 13 may be detained pending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section :

Provided that if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on, such article to the Salt-revenue-officer detaining the same, such article shall be at once released.

When an article is so detained it shall on the receipt of the said order be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces or declines to sanction the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

Procedure in
respect of
person arrest-
ed.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers
required to
assist Salt-
revenue-
officers.

24. All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue-officers in the execution of this Act.

(Chapter V — Powers of Stoppage, Search, Seizure and Arrest)

25 Any Salt-revenue officer who—

- (a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place,
- (b) vexatiously and unnecessarily detains, searches or arrests any person
- (c) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act,
- (d) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

Vexatious
search seiz-
ure etc
by Salt
revenue
officer

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both

[A Salt revenue officer shall not be deemed to search or detain any person, or to seize the moveable property of any person, vexatiously and unnecessarily within the meaning of clause (b) or clause (c) of the first paragraph of this section if the search is authorized by any rule under clause (b) of section 26, and the detention or seizure is such as is necessary for the purposes of such search]

26 The Governor General in Council may, from time to time make rules consistent with this Act to regulate the seizure disposal and destruction of things liable to be seized under this Act

Power to
regulate
seizures and
disposal of
things seized

Such rules may, among other matters, provide—

- (a) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale
- (b) that when anything is seized and an order for its release is subsequently passed and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty penalties and charges (if any) due in res-

¹ This paragraph was added by s. 3 of the Indian Salt Act (18-2) Amendment Act 1880 (18 of 1880)

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest. Chapter VI.—Miscellaneous.)

pect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale;

- (c) that the surplus-proceeds of a sale under clause (a) or clause (b) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

CHAPTER VI.

MISCELLANEOUS.

27. The Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

¹[Nothing in this section shall be deemed to affect Chapter IIIA of this Act or any rule under that Chapter.]

28. In addition to the rules which the Governor General in Council is hereinbefore empowered to make, he may from time to time make rules consistent with this Act to regulate the following matters, namely:—

- (a) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done;
- (b) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt-revenue-officers under this Act shall be appealable;
- (c) the fee to be charged on account of any license, pass, certificate dákhilá, rawána or other such document issued under this Act;

²and generally to carry out the provisions herein contained.

29. All rules³ made under this Act shall be published in the Gazette of India, and shall thereupon have the force of law.

¹ This paragraph was added by s. 4 of the Indian Salt Act (1882) Amendment Act, 1890 (19 of 1890).

² For rules as to through booking of salt made under this section, see Gazette of India, 1889, Pt. I, p. 422; *ibid.* 1890, Pt. I, p. 211; *ibid.* 1892, Pt. I, p. 426. For rules as to the manufacture of salt under license, see Gazette of India, 1884, Pt. I, p. 246.

As to rules for the Orissa Division of the Presidency of Madras, see Mad. R. and O.

³ For rules for Calcutta, see Gazette of India, 1901, Pt. I, p. 234; *ibid.* 1902, Pt. I, p. 315; the districts of the Orissa Division, see Gazette of India, 1888, Pt. I, p. 67; *ibid.* 1897, Pt. I, p. 873; *ibid.* 1898, Pt. I, p. 376; *ibid.* 1901, Pt. I, p. 337; the districts of 24-Parganas (except Calcutta), Midnapur, Khulna, Backergunge, and the Punjab, see Punj. R. and O.; Chittagong, see Gazette of India, 1898, Pt. I, p. 376; *ibid.* 1901, Pt. I, p. 337.

Further
matter for
which
Governor
General in
Council may
make rules.

Publication
of rules.

30. Subject to the provisions herein contained and to any rules for the time being in force made by the Governor General in Council, the Local Government or the Commissioner of the Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue-officers.

Power to confer powers of Assistant Commissioner and Salt revenue officer

31. [Amendment of Madras Act VI of 1871] Rep by the Indian Salt Act (1882) Amendment Act, 1890 (XIX of 1890), s 5

SCHEDULE.

(See section 2)

ENACTMENTS REPEALED

Acts of the Governor General in Council

Number and year	Short title	Extent of repeal
VIII of 1875	The Inland Customs Act 1875	The whole
II of 1876	The Burma Land and Revenue Act, 1876	Section 39, clause (b) and in clause (c) of the same section the words and letter under clause (b)
XXIII of 1877	The Salt Act 1877	The whole

Regulation

Number and year	Short title	Extent of repeal
III of 1877	The Ajmere Laws Regulation 1877	Sections 36 and 37

Act of the Lieutenant-Governor of Bengal in Council

Number and year	Short title	Extent of repeal
VII of 1881	The Salt Act 1881	Section 9

¹ For notification issued for (1) Ajmer-Merwara, see Gazette of India, 1887, Pt I, p 437, (2) Bengal, see Hen R and O (3) the Punjab, see Punj R and O

THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
2. Repeal of enactments.
References in previous Acts.
3. Amendment of Acts.
4. " Small Cause Court " defined.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

5. Courts of Small Causes established.
6. Court to be deemed under superintendence, etc., of High Court.
7. Appointment, suspension and removal of Judges.
8. Rank and precedence of Judges.
- 8A. Performance of duties of absent Judge.
9. Procedure and practice of Small Cause Court.
10. Chief Judge to distribute business of Court.
11. Procedure in case of difference of opinion.
12. Seal to be used.
13. Appointment of Registrar and ministerial officers.
Powers and duties of such officers.
14. Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.
15. Judge or other officer not to practise or trade.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

16. Questions arising in suits, etc., under Act to be decided according to law administered by High Court.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

SECTIONS.

17. Local limits of jurisdiction of Court.
18. Suits in which Court has jurisdiction.
- 18A. Plaintiff may abandon suit against defendant resident out of jurisdiction.
19. Suits in which Court has no jurisdiction.
- 19A. Return of plaint.
20. Court may by consent try suits beyond pecuniary limits of jurisdiction.
21. Suits by and against officers of Court.
22. Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

CHAPTER V.

PROCEDURE IN SUITS.

23. [*Repealed.*]
24. No written statement except in cases of set-off.
25. Return of documents admitted in evidence.
26. Compensation payable by plaintiff to defendant in certain cases.
27. Decree-holder to accompany officer executing warrant.
28. Things attached to immovable property and removeable by tenant to be deemed moveable in execution.
29. Discharge of judgment-debtor on sufficient security.
30. Court may in certain cases suspend execution of decree.
31. Execution of decree of Small Cause Court by other Courts.
Procedure when decree transferred.
32. Minors may sue in certain cases as if of full age.
33. Power to delegate non-judicial duties.
34. Registrar to hear and determine suits like a Judge.
Proviso.
35. Registrar may execute all decrees with the same powers as a Judge.
36. Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

CHAPTER VI.

NEW TRIALS AND APPEALS.

37. General finality of decrees and orders of Small Cause Court.
38. New trial of contested cases.

SECTIONS.

39. Removal of certain causes into High Court.
40. Rules with respect to suits removed under the last foregoing section.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

41. Summons against person occupying property without leave.
42. Service of summons.
43. Order for possession.
44. Such order to justify bailiff entering on property and giving possession.
Bar to proceedings against Judge or officer for issuing, etc., order or summons.
45. Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.
Occupant may sue for compensation.
46. Liability of applicant obtaining order when not entitled.
Application for order in such case an act of trespass.
47. Stay of proceedings on occupant giving security to bring suit against applicant.
48. Proceedings to be regulated by Code of Civil Procedure.
49. Recovery of possession no bar to suit to try title.

CHAPTER VIII.

DISTRESSES.

50. Local extent of Chapter.
Saving of certain rents.
51. Appointment of bailiffs and appraisers.
52. Security to be given by appointees.
53. Application for distress-warrant.
54. Issue of distress-warrant.
55. Time for distress.
56. What places bailiff may force open.

SECTIONS.

- 57. Property which may be seized.
- 58. Impounding distress.
- 59. Inventory.
Notice of intended appraisement and sale.
Copies of inventory and notice to be filed.
- 60. Application to discharge or suspend warrant.
- 61. Claim to goods distrained made by a stranger.
- 62. Power to award compensation to debtor or claimant.
- 63. Power to transfer to High Court cases involving more than one thousand rupees.
- 64. Appraisement.
Notice of sale.
- 65. Sale.
Application of proceeds.
- 66. Costs of distresses.
- 67. Account of costs and proceeds.
- 68. Bar of distresses except under this Chapter.
Penalty for making illegal distresses.

 CHAPTER IX.

REFERENCES TO HIGH COURT.

- 69. Reference when compulsory.
- 70. Security to be furnished on such reference by party against whom contingent judgment given.
If no such security given, party to be deemed to have submitted to judgment.

 CHAPTER X.

FEES AND COSTS.

- 71. Institution-fee.
- 72. Fees for processes.
- 73. Repayment of half-fees on settlement before hearing.
- 74. Fees and costs of poor persons.
- 75. Power to vary fees.
- 76. Expense of employing legal practitioners.
- 77. Sections 3, 5 and 25 of Court-fees Act, 1870, saved.

CHAPTER XI.

MISCONDUCT OF INTERIOR MINISTERIAL OFFICERS.

SECTIONS.

78. Power to fine officers.
79. Default of bailiff or other officer in execution of order or warrant.
80. Extortion or default of officers.
81. Court empowered to summon witnesses, etc.
82. Enforcement of order.

CHAPTER XII.

CONTEMPT OF COURT.

83. [*Repealed.*]
84. [*Repealed.*]
85. [*Repealed.*]
86. [*Repealed.*]
87. Imprisonment or committal of person refusing to answer or produce document.
88. Appeal from orders under section 87.

CHAPTER XIII.

MISCELLANEOUS.

89. Persons by whom process may be served.
90. Registers and returns.
91. Court to furnish records, etc., called for by Local Government or High Court.
92. Holidays and vacations.
93. Certain persons exempt from arrest by Court.
94. No suit to lie upon decree of Court.
95. Place of imprisonment.
96. Tender in suit for anything done under Act.
97. Limitation of prosecutions.

THE FIRST SCHEDULE.—ENACTMENTS REPEALED.

THE SECOND SCHEDULE.—[*Repealed.*]

THE THIRD SCHEDULE.—FORMS OF AFFIDAVIT, WARRANT, INVENTORY, ETC.

THE FOURTH SCHEDULE.—FEES FOR SUMMONSES AND OTHER PROCESSES.

(Chapter I.—Preliminary.)

ACT No. XV of 1882.¹

[17th March 1882.]

An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Presidency Small Cause Courts Act, 1882; and it shall come into force on the first day of July, 1882. Short title.
Commence-
ment.

But nothing herein contained shall affect the provisions of the Army Act, * * * section 151,² or the rights or liabilities of any person under any decree passed before that day.

2. On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein. Repeal of
enactments.

But all Courts constituted, appointments made and securities given under any of the said enactments shall, so far as may be, be deemed to have been respectively constituted, made and given under this Act.

All references to any enactment hereby repealed made in Acts passed prior to the said day shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof. References in
previous
Acts.

3. In Act No. XXIII of 1850³ (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII, 1847," the words and figures "the Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said" Amendment
of Acts.

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1880, Pt. V, p. 376; for first Report of the Select Committee, see *ibid*, 1881, Pt. V, p. 381; for further Report of the Committee, see *ibid*, 1882, Pt. V, p. 3; for proceedings in Council, see *ibid*, 1882, Pt. V, p. 3; and 1433; *ibid*, 1882, Supplement, p. 204; and *ibid*, 1882, Extra Supplement, p. 43.

For portions of the Code of Civil Procedure extended to the Presidency Small Cause Court at Calcutta, see Schedule A to Rules of Practice at Part I of the Calcutta Gazette for 1910, p. 814.

² The figures "1881" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

³ Coll. Stat., Vol. I.

⁴ The Calcutta Land Revenue Act, 1850, Ben. Code.

(Chapter I.—Preliminary. Chapter II.—Constitution and Officers of the Court.)

Act" and "the said Commissioners" the words "the Judges of the Court of Small Causes at Calcutta" shall be substituted.

"Small Cause Court" defined.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be, ²[and the expression "Registrar" includes a Deputy Registrar].

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Causes established.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

Court to be deemed under superintendence, etc., of High Court.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the twenty-eighth day of December, 1865, for such High Courts, and within the meaning of the ³Code of Civil XIV. Procedure ⁴[and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879], and the ^{XVII} High Court shall have, in respect of the Small Cause Court, the same ¹⁸⁷⁹ powers as it has under the ⁵twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

Appointment, suspension and removal of Judges.

7. ⁶* * * * the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court:

⁷[Provided that—

(1) no person shall be appointed to be Chief Judge of a Small Cause Court unless he is—

(a) an advocate of a High Court of Judicature established under the Indian High Courts Act, 1861⁵, or the Government of ^{24 & 2} India Act, 1915, or ^{c. 104.} ^{5 & 6} ^{c. 61.}

¹ The last paragraph of section 3 was repealed by s. 156 and Sch. V of the Code of Civil Procedure, 1908 (Act 5 of 1908); cf. s. 8, Act 5 of 1908.

² These words were added by s. 2 of the Presidency Small Cause Courts Act, 1899 (3 of 1899).

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

⁴ These words were added by s. 2 of the Presidency Small Cause Courts Act, 1895 (1 of 1895).

⁵ Coll. Stat., Vol. I.

⁶ The words "Subject to the control of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

⁷ This proviso was substituted by s. 2 of the Presidency Small Cause Courts (Amendment) Act, 1917 (23 of 1917).

(Chapter II.—Constitution and Officers of the Court.)

(b) a vakil or attorney of one of the said High Courts;

(2) no person shall be appointed to be a Judge of a Small Cause Court unless he is—

(a) an advocate, vakil or attorney of one of the said High Courts, or

(b) a Judge of a Court of Civil Judicature of not less than 5 years' standing; and

(3) of the persons so appointed to be Judges, including the Chief Judge, not less than one-third shall be advocates of one of the said High Courts.]

The Local Government may by a like notification suspend and, * * *
* * * remove any Judge so appointed. * * *

8. The Chief Judge shall be the first of the Judges in rank and precedence. Rank and precedence of Judges.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

*[8A. (1) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as Chief Judge, the Local Government may appoint any person, having the qualifications required by section 7, to act as Chief Judge or Judge of the said Court, as the case may be. Performance of duties of absent Judge

(2) Every person so appointed shall be authorized to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the Local Government sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be.]

*[9. (1) The High Court may, from time to time, by rules¹ having the force of law,— Procedure and practice of Small Cause Court.

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause

¹ The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (33 of 1920).

² The last paragraph was repealed by s. 3 (2) of the Presidency Small Cause Courts Act, 1895 (1 of 1895).

³ S. 8A was substituted by s. 3 of the Presidency Small Cause Courts Act, 1899 (3 of 1899).

⁴ This section was substituted by s. 5 of the Presidency Small Cause Courts Act, 1895 (1 of 1895), and all rules made by High Court under this section shall be deemed to have been validly made, see s. 2 of Act 1 of 1914.

⁵ For notifications prescribing such rules in—

(1) Bengal, see Calcutta Gazette, 1910, Pt. I, p. 784, and *ibid*, 1911, Pt. I, p. 741.

(2) Bombay, see Bom. Rules and Orders.

(3) Madras, see Madras Rules and Orders.

(Chapter II.—Constitution and Officers of the Court.)

Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment for the time being in force; and

¹[(aa) empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and]

(b) cancel or vary any such rule or rules.

Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section.]

Chief Judge to distribute business of Court.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Procedure in case of difference of opinion.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Seal to be used.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Appointment of Registrar and ministerial officers.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint ²[a Deputy Registrar and] as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Powers and duties of such officers.

The Registrar and other officers so appointed shall exercise such powers and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule, direct.

¹ Cl. (aa) was added by s. 4 of the Presidency Small Cause Courts Act, 1899 (3 of 1899).

² These words were inserted by s. 5 of the Presidency Small Cause Courts Act, 1899 (3 of 1899).

(Chapter II—*Constitution and Officers of the Court* Chapter III—*Law administered by the Court* Chapter IV—*Jurisdiction in respect of Suits*)

The Chief Judge may suspend or remove any Registrar or other officer so appointed, but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government

14 The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees And subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

[*Explanation*—For the purposes of this section an application for possession under section 41 shall be deemed to be a suit]

15 No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession

Judge or other officer not to practise or trade

Any such Judge or officer so practising acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature

CHAPTER III

LAW ADMINISTERED BY THE COURT

16 All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction

Questions arising in suits, etc., under Act to be decided according to law administered by High Court

CHAPTER IV

JURISDICTION IN RESPECT OF SUITS

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court

Local limits of jurisdiction of Court

¹ This Explanation was added by s. 3 of the Presidency Small Cause Courts Act 1885 (1 of 1885)

Suits in which Court has jurisdiction.

18. Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees: and—

- (a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or
- (b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside or carry on business or personally work for gain, within such local limits; or
- (c) any of the defendants at the time of the institution of the suit, actually or voluntarily resides or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution:

¹[Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal.]

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Plaintiff may abandon suit against defendant resident out of jurisdiction.

²[18A. The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defend-

¹ This proviso was added by s. 7 of the Presidency Small Cause Courts Act, 1895 (1 of 1895).

² S. 18A was added by s. 8, *ibid.*

(Chapter IV.—Jurisdiction in respect of Suits.)

ant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain.]

19. The Small Cause Court shall have no jurisdiction in—

- (a) suits concerning the assessment or collection of the revenue;
- (b) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras,¹ [Bombay or Fort William in Bengal] in his official capacity, or by any person by order of the Governor General in Council or the Local Government;
- (c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;
- (d) suits for the recovery of immoveable property;
- (e) suits for the partition of immoveable property;
- (f) suits for the foreclosure or redemption of a mortgage of immoveable property;
- (g) suits for the determination of any other right to or interest in immoveable property;
- (h) suits for the specific performance or rescission of contracts;
- (i) suits to obtain an injunction;
- (j) suits for the cancellation or rectification of instruments;
- (k) suits to enforce a trust;
- (l) suits for a general average loss and suits on policies of insurance on sea-going vessels;
- (m) suits for compensation in respect of collisions on the high seas;
- (n) suits for compensation for the infringement of a patent, copy-right or trade-mark;
- (o) suits for a dissolution of partnership or for an account of partnership-transactions;
- (p) suits for an account of property and its due administration under the decree of the Court;
- (q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

Suits in which Court has no jurisdiction.

¹ These words were substituted for the words "or Bombay" by the Repealing and Amending Act, 1914 (10 of 1914).

- (r) suits for the restitution of conjugal rights, * * * or for a divorce;
- (s) suits for declaratory decrees;
- (t) suits for possession of a hereditary office;
- (u) suits against Sovereign, Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;
- (v) suits on any judgment of a High Court;
- (w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

Return of
plaint.

²[19A. Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure³ and make such order with respect to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, 1877,⁴ be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government.]

Court may
by consent
try suits be-
yond pecu-
niary limits
of jurisdic-
tion.

20. When the parties to a suit, which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement⁵ in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

Suits by and
against
officers of
Court.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its

¹ The words "for the recovery of a wife" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

² S. 19A was added by s. 9 of the Presidency Small Cause Courts Act, 1895 (1 of 1895).

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VII, rule 10 (2).

⁴ See now the Indian Limitation Act, 1908 (9 of 1908).

⁵ As to additional fee payable on the filing of such agreement, see s. 71, *infra*.

(Chapter IV.—*Jurisdiction in respect of Suits.* Chapter V.—*Procedure in Suits.*)

process, or the proceeds or value thereof ¹[and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees] may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than ²[one thousand] rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no cost shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

PROCEDURE IN SUITS.

23. [*Portions of Civil Procedure Code extending to Court.*] *Rep. Act I of 1895, s. 12.*

24. Except in cases of set-off under the Code of Civil Procedure, section 111,³ no written statement shall be received unless required by the Court.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under section 143 of the Code of Civil Procedure,⁴ be entitled to receive back the same:

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: provided also that

¹ These words were inserted by s. 10 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

² These words were substituted for the words "two thousand" by s. 11, *ibid.*

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sec. 7, Order VIII, rule 6.

⁴ See now *ibid.*, Order XIII, rule 8.

no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

Compensation payable by plaintiff to defendant in certain cases.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure¹ is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

Decree-holder to accompany officer executing warrant.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree ²[and for the purpose of deciding all questions arising in the execution of such decree,] be deemed to be moveable property and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XXI, rule 53.

² These words were inserted by s. 2 of the Presidency Small Cause Courts Act, 1906 (4 of 1906).

(Chapter V.—Procedure in Suits.)

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released. Discharge of judgment-debtor on sufficient security.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit. Court may in certain cases suspend execution of decree.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution— Execution of decree of Small Cause Court by other Courts.

(a) in the case of execution against immoveable property situate within such local limits—¹[to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be];

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

2. The procedure prescribed by the Code of Civil Procedure² for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases. Procedure when decree transferred.

32. Notwithstanding anything contained in the Code of Civil Procedure³ as applied by this Act, any minor may institute a suit for any sum of money not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age. Minors may sue in certain cases as if of full age.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure⁴ as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be Power to delegate non-judicial duties.

¹ These words were substituted for the words "to the High Court" by s. 12 of the Madras City Civil Court Act, 1872 (7 of 1872), Mad. Code.

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

Chapter V.—Procedure in Suits. Chapter VI.—New Trials and Appeals.)

done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule,¹ declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

35. The Registrar may receive applications for the setting aside of any decree passed by the Court and may commit the same to the Court for consideration and make an order in respect thereof as the Court might make in such cases.

n of de-
scharge
Judge

by the Registrar
provisions in

or
trial

S.

39. (1) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court¹.

Removal of certain causes into High Court.

²[(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right:

Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order for the payment of the amount claimed and of the costs which may become payable by him to the plaintiff in respect of the said suit.]

(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made.

(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.

40. (1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court.

Rules with respect to suits removed under the last foregoing section.

(2) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure³ unless the Court shall otherwise order.

(3) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court

¹ In Madras, the High Court on such an application may either remove the suit to its own file or transfer the same to the Madras City Civil Court, see s. 3 of Mad. Act 5 of 1916.

² This sub-section was substituted for the original sub-section (2) by s. 3 of the Presidency Small Cause Courts Act, 1906 (1 of 1906).

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VIII, rule 11.

(Chapter V.—*Procedure in Suits.* Chapter VI.—*New Trials and Appeals.*)

done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule,¹ declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

² CHAPTER VI.

NEW TRIALS AND APPEALS.

37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

38. Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Explanation.—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

¹ For rules in Madras declaring certain duties to be non-judicial or quasi-judicial acts which may be done by the Registrar, see Mad. R. and O.

² This Chapter was substituted for the original Chap. VI by s. 13 of the Presidency Small Cause Courts Act, 1895 (1 of 1895).

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. II, s. 16.

Registrar
to hear and
determine
suits like a
Judge.
Proviso.

Registrar
may execute
all decrees
with the
same powers
as a Judge.

Decrees and
orders of
Registrar to
be subject to
new trial as
if made by
a Judge

General final-
ity of decrees
and orders of
Small Cause
Court.
trial of
tested

XIV.

(Chapter VI—*New Trials and Appeals*)

39. (1) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court¹

Removal of certain causes into High Court.

²[(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right.]

Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order for the payment of the amount claimed and of the costs which may become payable by him to the plaintiff in respect of the said suit.]

(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made

(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned

40. (1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court.

Rules with respect to suits removed under the last foregoing section.

(2) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure³ unless the Court shall otherwise order

(3) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court

¹ In Madras, the High Court on such an application may either remove the suit to its own file or transfer the same to the Madras City Civil Court, see s. 3 of Mad. Act 5 of 1916

² This sub-section was substituted for the original sub-section (2) by s. 3 of the Presidency Small Cause Courts Act, 1906 (4 of 1906)

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VIII, rule 11

in respect of the plaint in the levy of any fees which according to the practice of the High Court are payable to the Government.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

Summons
against per-
son occupy-
ing property
without
leave.

¹41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed ²[two] thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply³ to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

Service of
summons.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure⁴ for the service of a summons on XI a defendant.

Order for
possession.

¹43. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Such order
to justify
bailiff enter-

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of

¹ Ss. 41 and 43 have been virtually amended and supplemented in the City of Madras by Mad. Act 3 of 1922.

² This word was substituted for the word "one" by s. 2 of the Presidency Small Cause Courts (Amendment) Act, 1912 (9 of 1912).

³ For fee on such application, see s. 71, *infra*.

⁴ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Chapter VII—Recovery of Possession of Immovable Property)

six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons by reason only that the applicant was not entitled to the possession of the property

45 When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser, but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity

when no such damage is proved the suit shall be dismissed, and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees the Court shall award to the plaintiff no more costs than compensation unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff

46 Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this Chapter from a suit by any person deeming himself aggrieved thereby when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property

And when the applicant was not at the time of applying for any such order as aforesaid entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant

147 Whenever on an application being made under section 41 the occupant binds himself with two sureties in a bond for such amount as the Small Cause Court thinks reasonable having regard to the value of the property and the probable costs of the suit next hereinafter mentioned to institute without delay a suit in the High Court against the applicant, for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is

¹ S. 4¹ has been amended in its application to the Presidency town of Madras by s. 2 (1) of Mad. Act 3 of 1927

(Chapter VII.—Recovery of Possession of Immoveable Property.
Chapter VIII.—Distresses.)

given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43.

Nothing contained in section 22 shall apply to suits under this section.

Proceedings
to be regu-
lated by
Code of Civil
Procedure.

48. In all proceedings under this Chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the ¹Code of Civil Procedure.

Recovery of
possession no
bar to suit to
try title.

49. Recovery of the possession of any immoveable property under this Chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

CHAPTER VIII.

DISTRESSES.

Local extent
of Chapter.

50. This Chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay. But nothing contained in this Chapter applies—

Saving of
certain rents.

- (a) to any rent due to Government;
- (b) to any rent which has been due for more than twelve months before the application mentioned in section 53.

Appointment
of bailiffs
and apprais-
ers.

51. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this Chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

Security to
be given by
appointees.

52. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

Application
for distress
warrant.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this Chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² S. 49 has been amended in its application to the Presidency town of Madras by s. 2 (b) of Mad. Act 3 of 1927.

(Chapter VIII.—Distresses.)

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same schedule, addressed to any one of such bailiffs. Issue of distress warrant.

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

55. Every distress under this Chapter shall be made after sunrise and before sunset, and not at any other time. Time for distress.

56. The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house, the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this Chapter: What places bailiff may force open.

Provided that he shall not enter or break open the door of any room appropriated for the zenáná or residence of women, which by the usage of the country is considered private.

57. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress: Property which may be seized.

Provided that the bailiff shall not seize—

- (a) things in actual use; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or
- (c) the debtor's necessary wearing apparel; or
- (d) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent. Impounding distress.

59. On seizing any property under section 57 the bailiff shall make an inventory of such property and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises. Notice of intended appraisal and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice. Copies of inventory and notice to be filed.

Application
to discharge
or suspend
warrant.

60. The debtor or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

Claim to
goods dis-
trained made
by a stranger.

61. If any claim is made to, or in respect of, any property seized under this Chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

Power to
award com-
pensation
to debtor or
claimant.

62. In any case under section 60 or section 61 the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may for that purpose make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

Power to
transfer to
High Court

63. In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or

(Chapter VIII —Distresses)

claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court and may make such order therein as the High Court thinks fit

cases involving more than one thousand rupees

Every application under this section shall be made within seven days from the date of the seizure of the subject matter in dispute

In granting applications under this section, the High Court may impose such terms as to payment of or giving security for, costs or otherwise as it thinks fit

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction, and orders made under this section may be executed as if they were made in the exercise of such jurisdiction, and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made

84. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court any two of the said bailiffs may at the expiration of five days from a seizure of property under this Chapter, appraise the property so seized and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed

Appraisal
ment.

Notice of
sale

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section

85. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court, and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt, and the surplus, if any, shall be returned to the debtor

Application
of proceeds

Provided that the debtor may direct that the sale shall take place in any other manner first giving security for any extra costs thereby occasioned

86. No costs of any distress under this Chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed

Costs of
distresses

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs as appears to the said Judges expedient

Account of
costs and
proceeds.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realised by sale of the property distrained and paid over to landlords under the provisions of this Chapter.

Bar of dis-
tresses except
under this
Chapter.

68. No distress shall be levied for arrears of rent except under the provisions of this Chapter;

Penalty for
making ille-
gal distresses.

and any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

REFERENCES TO HIGH COURT.

Reference
when com-
pulsory.

¹[**69.** (1) If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

if in any suit or in any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court; and the provisions of sections 619 to 621 of the ²Code of Civil Procedure, shall, so far as they are applic-^{XIV}able, be deemed to apply as if such reference had been made under section 617³ of the said Code.

¹ This section was substituted by s. 4 of the Presidency Small Cause Courts Act, 1906 (4 of 1906).

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XLVI, rules 3 to 5.

³ See now *ibid.*, rule 1.

(Chapter IX.—References to High Court. Chapter X.—Fees and Costs.)

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1), it shall either reserve judgment or give judgment contingent upon such opinion.]

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Security to be furnished on such reference by party against whom contingent judgment given.

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment

CHAPTER X.

FEEs AND COSTS.

71. A fee not exceeding—

Institution-fee.

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section 41; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-

Fees for processes.

¹ For modifications with which this section applies in Bengal, see s 16 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act 4 of 1922).

² The words and figures "section 33 or", were repealed by the Presidency Small Cause Courts Act (1882) Amendment Act, 1896 (7 of 1896).

(Chapter X.—Fees and Costs. Chapter XI.—Misconduct of Inferior Ministerial Officers.)

matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

Repayment
of half fees
on settlement
before hear-
ing.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Fees and
costs of poor
persons.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections 71 and 72.

Power to
vary fees.

75. The Local Government may from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections 71 and 72:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Expense of
employing
legal practi-
tioners.

76. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act in the Small Cause Court in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Sections 3,
5 and 25 of
Court-fees
Act, 1870,
saved. ३३

77. Nothing contained in this Chapter shall affect the provisions of VII of sections 3, 5 and 25 of the Court-fees Act, 1870.

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Power to
fine officers.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Default of
bailiff or
other officer
in execution
of order or
warrant.

79. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the

(Chapter XI.—*Misconduct of Inferior Ministerial Officers.*Chapter XII.—*Contempt of Court.*)

Chief Judge, represents the amount of the damage sustained by such person thereby.

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

81. For the purposes of any inquiry under this Chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

82. Any order under this Chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XII.

CONTEMPT OF COURT.

83. [*Procedure of Court in certain cases of contempt.*] Repealed by the Repealing and Amending Act, 1914 (10 of 1914).

84. [*Record in such cases.*] Repealed by the Repealing and Amending Act, 1914 (10 of 1914).

85. [*Procedure where Court considers that case should not be dealt with under section 83.*] Repealed by the Repealing and Amending Act, 1914 (10 of 1914).

86. [*Discharge of offender on submission or apology.*] Repealed by the Repealing and Amending Act, 1914 (10 of 1914).

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting

(Chapter XII.—Contempt of Court. Chapter XIII.—Miscellaneous.)

in his refusal, he may be dealt with according to the provisions of section 1[480 or section 482 of the Code of Criminal Procedure, 1898]. V of

Appeal from
orders under
section 87.

88. Any person deeming himself aggrieved by an order under * * * section 87 may appeal to the High Court, and the provisions of the [Code of Criminal Procedure, 1898]³, relating to appeals shall, so far V of as may be, apply to appeals under this section.

CHAPTER XIII.

MISCELLANEOUS.

Persons by
whom pro-
cess may be
served.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Registers
and returns.

90. The Small Cause Court shall keep such registers, books and accounts and submit to the High Court such statements and returns as may, subject to the approval of the Local Government, be ⁴prescribed by the High Court.

Court to fur-
nish records,
etc., called
for by Local
Government
or High
Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Holidays and
vacations.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

Certain per-
sons exempt
from arrest
by Court.

93. The Governor General and Members of his Council, the Govern-
ors of Fort St. George, ⁵[Bombay and Po in Bengal], and the
Members of their respective Councils { * and the Chief

¹ These figu
section 85 "1

² The word
Amending Ac

³ These wo.
1877 " by the

⁴ For rules p
⁵ These words

the Bengal, Bih.
⁶ The words "

E., *ibid.*

... were substituted
and Amending A

section 83 or " w
4).

for the word
ending Act, 191

ister, etc., in
or the words "

A... Laws A
or of Ben

and words "83 or
1914).

the Repealing and

gistrates' Act,

and O.
7, Sch. E of

s. 7, Sch.

(Chapter XIII —Miscellaneous The First Schedule)

Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104,¹ shall not be liable to arrest by order of the Small Cause Court

94. No suit shall lie on any decree of the Small Cause Court

No suit to lie upon decree of Court.
Place of imprisonment.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover

Tender in suit for anything done under Act.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed

Limitation of prosecutions.

THE FIRST SCHEDULE

[See section 2]

ENACTMENTS REPEALED

A—Charters of the Supreme Courts

Date		Extent of repeal.
26th March 1774	Charter of the Supreme Court at Fort William	Clause 21
26th December 1800	Charter of the Supreme Court at Madras	Clause 47
8th December 1823	Charter of the Supreme Court at Bombay	Clause 59

B—Acts of the Governor General in Council

Number and year	Subject or short title	Extent of repeal
IX of 1850	For the more easy recovery of small debts and demands in Calcutta Madras and Bombay	So much as has not been repealed
XX of 1857	To amend Act IX of 1850	The whole
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta Madras and Bombay, and to provide for the	So much as has not been repealed
I of 1875	Presidency Courts	The whole
.	.	.
.	.	.
.	.	.

¹ The Indian High Courts Act, 1861, now repealed by the Government of India Act, 1915

² This entry was repealed by s. 2 and Sch. of the Repealing Act, 1927 (12 of 1927)

*Presidency Small Cause Courts.. [1882: Act XV.
(The First, Second and Third Schedules.)*

THE FIRST SCHEDULE—contd.

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

[Repealed by Act I of 1895, s. 12.]

THE THIRD SCHEDULE.

FORMS.

A.

[See section 53.]

In the Small Cause Court for

A. B.———(plaintiff),

Versus

C. D.———(defendant).

A. B., of———, in the town of———, maketh oath (or affirms) and saith that C. D.———, of———, is justly indebted to——— in the sum of Rs.——— for arrears of rent of the house and premises No.———, situated at———, in the town of———, due for——— months, to wit, from——— to———, at the rate of Rs.——— per mensem.

Sworn (or affirmed) before me the——— day of——— 188 .

Judge [or Registrar].

B.

[See section 54.]

In the Small Cause Court for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the house and premises situate at No.———, in the town of———, for the sum of——— Rs. and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated——— day of——— 18 .

(Signed and sealed.)

To H. F., Bailiff and Appraiser.

*(The Third Schedule)*THE THIRD SCHEDULE—*contd.*

C.

[See section 59]

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE

(State particulars of property seized)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of _____ Rs, being the amount of _____ month's rent due to A B at _____ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882 Dated the _____ day of _____ 18

(Signed) E F,

Bailiff and Appraiser

To C D

D.

[See section 64]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the _____ day of _____, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [or upon _____ on your behalf, as the case may be] under date the _____, and that the said property will be sold on the _____ [two clear days at least after the date of the notice] at _____ pursuant to the provisions of the said Act Dated this _____ day of _____ 18 .

(Signed) E. F.

G. H.,

Bailiffs and Appraisers.

To C. D.

*Presidency Small Cause Courts. [1882: Act XV.
(The Third and Fourth Schedules.)*

THE THIRD SCHEDULE—concl'd.

E.

[See section 66.]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.		Affidavit and warrant to distrain	Order to sell.	Commission.	TOTAL.
Rs.	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1. and under	5	0 4 0	0 8 0	0 8 0	1 4 0
5	10	0 8 0	0 8 0	1 0 0	2 0 0
10	15	0 8 0	0 8 0	1 8 0	2 8 0
15	20	0 8 0	1 0 0	2 0 0	3 8 0
20	25	0 12 0	1 0 0	2 8 0	4 4 0
25	30	1 0 0	1 0 0	3 0 0	5 0 0
30	35	1 0 0	1 0 0	3 8 0	5 8 0
35	40	1 0 0	1 8 0	4 0 0	6 8 0
40	45	1 4 0	2 0 0	4 8 0	7 12 0
45	50	1 8 0	2 0 0	5 0 0	8 8 0
50	60	2 0 0	2 0 0	6 0 0	10 0 0
60	80	2 8 0	2 8 0	6 8 0	11 8 0
80	100	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of	100	3 0 0	3 0 0	7 per centum	..

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

THE FOURTH SCHEDULE.

[See section 72.]

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0

(The Fourth Schedule)

1882: Act XIX.] *Punjab University*THE FOURTH SCHEDULE—*contd*

[See section 72.]

FEES FOR SUMMONSES AND OTHER PROCEEDINGS

When the amount or value of the subject matter exceeds	But does not exceed	Fee for summons or writ	Fee for other proceedings
Rs	Ps	Rs A P	Rs A P
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1 000	3 4 0	10 0 0
1 000	1 100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1 500	1 600	4 0 0	13 0 0
1 600	1,700	4 2 0	13 8 0
1,700	1 800	4 4 0	14 0 0
1 800	1 900	4 6 0	14 8 0
1 900	2,000	4 8 0	15 0 0

THE PUNJAB UNIVERSITY ACT, 1882

CONTENTS

PREAMBLE

SECTIONS

- 1 Short title
- 2 Establishment and incorporation of University
- 3 Property of Punjab University College to vest in University.

SECTIONS.

4. Chancellor.
5. Vice-Chancellor.
6. [*Repealed.*]
7. First Fellows.
8. Cancellation and vacation of appointment of Fellow.
9. Constitution and powers of Senate.
- 10 and 11. [*Repealed.*]
12. Appointment of Syndicate, Faculties, Examiners and Officers.
- 13 to 16. [*Repealed.*]
17. Power to levy fees.
18. [*Repealed.*]
19. Duty of Local Government to enforce Act, statutes, rules and regulations.
20. Notifications in certain cases.
21. Annual accounts.
22. [*Repealed.*]

 THE SCHEDULE.
PART I.—[*Repealed.*]PART-II.—PERSONS TO BE DEEMED TO HAVE BEEN APPOINTED FELLOWS
UNDER SECTION 6, CLAUSE (b) OR (c).

 ACT No. XIX of 1882.¹

[5th October 1882.]

 An Act to establish and incorporate the University of the
Punjab.

ble.

WHEREAS an Institution, styled at first the Lahore University College, but subsequently the Punjab University College, was established at Lahore in the year 1869, with the special objects of promoting the diffusion of European science, as far as possible, through the medium of the vernacular languages of the Punjab, improving and extending vernacular literature generally, affording encouragement to the enlightened study of the Eastern classical languages and literature, and associating the learned and influential classes of the Province with the officers of Government in the promotion and supervision of popular education;

But it was at the same time provided that every encouragement should be afforded to the study of the English language and literature, and that, in all subjects which could not be completely taught in the verna-

¹ For Statement of Objects and Reasons, see Gazette of India, 1882, Pt. V, p. 869; for Proceedings in Council, see *ibid.* Supplement, pp. 853, 903 and 1325.

The Indian Universities Act, 1904 (8 of 1904), shall be deemed to be part of this Act: see Act 8 of 1904, s. 2 (1).

cular, the English language should be regarded as the medium of examination and instruction;

And whereas this Institution was, by a Notification, No. 472, dated 8th December 1869, published in the Punjab Government Gazette of the twenty-third day of December 1869, declared to be so established, in part fulfilment of the wishes of a large number of the Chiefs, Nobles and influential classes of the Punjab, and it is now expedient, the said Institution having been attended with success, further to fulfil the wishes of the said Chiefs, Nobles and influential classes, by constituting the said Institution a University for the purpose of ascertaining, by means of examination or otherwise, the persons who have acquired proficiency in different branches of Literature, Science and Art, and for the purpose of conferring upon them academical degrees, diplomas, Oriental literary titles, licenses and marks of honour;

And whereas it is also expedient that the University so constituted should be incorporated, and that the property, moveable and immoveable, which has been hitherto held by, or in trust for, the said Institution should become the property of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied;

It is hereby enacted as follows:—

1. This Act may be called the Punjab University Act, 1882;

Short title.

2. (1) A University shall be established at Lahore and the Governor General for the time being shall be the Patron of the University.

Establishment and incorporation of University.

(2) The University shall consist of a Chancellor, a Vice-Chancellor and such number of Fellows as may be determined in manner hereinafter provided.

(3) The University shall be a Body Corporate by the name of the University of the Punjab, having perpetual succession and a common seal, with power to acquire and hold property, moveable or immoveable, to transfer the same, to contract, and to do all other things necessary for the purposes of its constitution.

(4) The University shall come into existence on such day² as the Local Government may, by notification in the official Gazette, appoint in this behalf.

3. All the property, moveable and immoveable, held at the date at which the University comes into existence by or in trust for the Punjab

Property of Punjab University

¹ The words "and it shall come into force at once" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

² The University came into existence on the 14th October 1882. *see Notification No. 333-S, Punjab Gazette, 1882, Pt. I, p. 485.*

College to
vest in Uni-
versity.

University College, shall, on that date, become the property of the University, to be administered by it for the purposes of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied.

Chancellor.

4. The Lieutenant-Governor of the Punjab for the time being shall be the Chancellor of the University; and the first Chancellor shall be the Hon'ble Sir Charles Umpherston Aitchison, Knight Commander of the Most Exalted Order of the Star of India, Companion of the Order of the Indian Empire, Doctor of Laws.

Vice-Chan-
cellor.

5. (1) The Vice-Chancellor shall be such one of the Fellows as the Chancellor may, from time to time, appoint in this behalf.

(2) Except as provided in sub-section (4), he shall hold office for two years from the date of his appointment, and on the expiration of his term of office may be re-appointed.

(3) But, if a Vice-Chancellor leaves India without the intention of returning thereto, he shall thereupon cease to be Vice-Chancellor.

(4) James Broadwood Lyall, Esquire, of the Bengal Civil Service, and at present Financial Commissioner of the Punjab, shall be deemed to have been appointed the first Vice-Chancellor; and his term of office shall, subject to the provisions of sub-section (3), expire on the last day of December 1884.

6. [*Fellows.*] *Repealed by the Indian Universities Act, 1904 (VIII of 1904).*

First Fel-
lows. ²

7. 1 * * * *

(2) the persons named in Part II of that schedule shall, except for the purposes of the second clause of the proviso to section 6, be deemed to have been appointed Fellows under clause (b) or (c) of section 6.

Cancellation
and vacation
of appoint-
ment of
Fellow.

8. (1) The Chancellor may, with the consent of not less than two-thirds of the members of the Senate for the time being in India, cancel the appointment of any Fellow ² * * *

(2) If any Fellow ³ * * * leaves India without the intention of returning thereto, or is absent from India for more than four years, he shall thereupon cease to be a Fellow.

¹ Sub-section (1) was repealed by s. 29 and Sch. II of the Indian Universities Act, 1904 (8 of 1904).

² The rest of this sub-section was repealed by s. 29, and Sch. II, *ibid.*

³ The words "appointed under section 6, clause (b) or clause (c), and not being a person named in Part II of the Schedule to this Act" were repealed by s. 29 and Sch. II, *ibid.*

9. (1) The Chancellor, Vice-Chancellor and Fellows for the time being shall form the Senate of the University

Constitution
and powers
of Senate

(2) The Senate shall have the entire management of, and superintendence over, the affairs, concerns and property of the University, and shall provide for that management, and exercise that superintendence, in accordance with the statutes rules and regulations for the time being in force * * *

10 and 11. [Chairman at meeting of Senate Proceedings at meetings of Senate] Repealed by the Indian Universities Act, 1904 (VIII of 1904), s 29 and Sch II

12 * * * * *

Appointment
of Syndicate
Faculty of
Examiners,
and Officers.

The first Registrar shall be Gottheb William Iestner, Esquire Master of Arts, Doctor of Laws, Barrister-at-law

13 to 16 [Functions of Syndicate—Power to confer degrees, etc after Examination—Power to confer degrees on persons who have passed Examinations of the Punjab University College in 1882 Power to confer honorary degrees] Repealed by the Indian Universities Act, 1904 (VIII of 1904), s 29 and Sch II

17. The Senate may charge such reasonable fees for entrance into the University and continuance therein, for admission to the examinations of the University, for attendance at any lectures or classes in connection with the University, and for the degrees to be conferred by the University, as may be imposed by the rules or regulations for the time being in force under this Act

Power to
levy fees.

18 [Power to make statutes, rules and regulations] Repealed by the Indian Universities Act, 1904 (VIII of 1904) s 29 and Sch II

19 It shall be the duty of the Local Government to require that the proceedings of the University shall be in conformity with this Act and with the statutes rules and regulations for the time being in force under the same, and the Local Government may exercise all powers necessary for giving effect to its requisitions in this behalf, and may (among other things) annul, by a notification in the official Gazette, any such proceeding which is not in conformity with this Act and the said statutes, rules and regulations

Duty of Local
Government
to enforce
Act, statutes,
rules and
regulations

20. All appointments made under section 5 all appointments * * * cancelled under * * * section 8, all degrees diplomas Oriental literary titles or licences conferred * * * and all statutes rules and regulations made under section

Not valid in
in certain
cases.

* The words "under this Act" were repealed by s 29 and Sch II of the Indian Universities Act, 1904 (8 of 1904)

* The Act except the last paragraph was repealed by s 29 and Sch II of the

* The words "made or" "sections six clauses (b) and (c) and" and "under section fourteen fifteen and sixteen" were repealed by s 29 and Sch II, of the

18, shall be notified in the official Gazette; wherein, also, the record of the proceedings of every meeting of the Senate shall be duly published.

21. The accounts of the income and expenditure of the University shall be submitted once in every year to the Local Government for such examination and audit as the Local Government may direct.

22. [Temporary provision as to statutes, rules and regulations.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

Annual
accounts.

THE SCHEDULE.

(See section 7.)

* * * * *

PART II.

Persons to be deemed to have been appointed Fellows under section 6, clause (b) or (c):—

His Highness Maharájá Ranbír Singh, of Jammú and Kashmír,
G.C.S.I., C.I.E., Counsellor of the Empress of India;

His Highness Maharájá Rajindar Singh, of Patiála;

His Highness Nawáb Sadík Muhammad Khán, of Baháwalpur,
G.C.S.I.;

His Highness Rájá Raghbír Singh, of Jhínd, G.C.S.I., C.I.E., Coun-
sellor of the Empress of India;

His Highness Rájá Híra Singh, of Nabhá, G.C.S.I.;

His Highness Rájá Jagatjít Singh, of Kapúrthhala;

Rájá Bije Sen, of Mandi;

Nawáb Ibrahim Alí Khán, of Maler Kotla;

Rájá Bikram Singh, of Farídkot;

Nawáb Abdul Majid Khán;

Sardár Ajít Singh, Atariwála;

Rai Amín Chand, Sardár Bahádur;

Malaz-ul-Ulma Sardár Atar Singh, C.I.E., of Bhadaur;

Major-General Henry Prevost Babbage, Bengal Staff Corps, late
Deputy Commissioner, Punjab;

David Graham Barkley, Esquire, M.A., Bengal Civil Service,
Barrister-at-law;

Deputy Surgeon-General Henry Walter Belew, C.S.I.;

¹ Part I in the schedule was repealed by s. 29 and Sch. II of the Indian Universities Act, 1904 (8 of 1904).

- Reverend Edward Bickersteth, M A ,
 Charles Boulnois, Esquire, Barrister-at-law, late Judge, Chief Court
 Punjab,
 Sardar Bikrama Singh, C S I , Ahluwalia,
 Arthur Brandreth, Esquire, Barrister at law, late of the Bengal Civil
 Service and Judge, Chief Court, Punjab,
 Surgeon-Major Thomas Edwin Burton Brown, M D ,
 John Scarlett Campbell, Esquire, late of the Bengal Civil Service
 and Judge Chief Court Punjab,
 Surgeon Major William Center M D M A
 Reverend Robert Clark M A ,
 John Graham Coldery Esquire M A , Bengal Civil Service,
 The Honble Henry Stuart Cunningham, M A Barrister at-law,
 Judge of the High Court, Calcutta
 Surgeon Major Alexander Morrison Dallas
 Mansel Longworth Dames Esquire Bengal Civil Service
 Sir Robert Henry Davies K C S I , C I E , late Lieutenant-Governor
 of the Punjab and its Dependencies
 Colonel William George Davis C S I
 Deputy Surgeon General Aunesley Charles Castriot DeRozzy, M A ,
 Sir Robert Lykes Igeston K C S I C I E Counsellor of the Impres-
 late Lieutenant Governor of the Punjab and its Dependencies,
 Dennis Fitzpatrick Esquire M A Bengal Civil Service, Barrister at-
 law
 Reverend C W Foreman, M D ,
 The Right Reverend Thomas Valpy French D D Lord Bishop of
 Lahore
 Munshi Ghulam Nabi
 Surgeon Major Robert Gray, M D
 Major Leopold John Henry Gray, C S I Bengal Staff Corps,
 Sir Lepel Henry Griffin K C S I Bengal Civil Service
 Pandit Guru Parshad,
 Sayyid Hadf Husain Khan,
 Rājā Harbans Singh
 Kaur Haraām Singh, Ahluwalia,
 Doctor Thomas Hastings late Deputy Inspector General of Hos-
 pitals,
 Edward Piercy Henderson, Esquire, Bengal Civil Service, Barrister-
 at-law
 Surgeon-Major George Henderson M D ,
 Mir Hidayat Ali Khan Bahadur,
 Lieutenant Colonel William Rice Morland Holroyd,
 Reverend W Hooper, M A ,
 Reverend T P Hughes, M D ,
 Munshi Hukm Chand;

Sodhi Hukm Singh.
 Denzil Charles Jelf Ibbetson, Esquire, B.A., Bengal Civil Service;
 Rájá Jahándád Khán, Khán Bahádur, Ghakkar;
 Aghá Kalbabíd;
 Fakír Sayyad Kamr-ud-din;
 Rai Bahádur Kanhya Lál, C.E.;
 Khán Bahádur Khán Muhammad Sháh;
 Bába Khem Singh, C.I.E., Bedi;
 John Lockwood Kipling, Esquire;
 Surgeon Edward Jawrie, M.D.;
 Gottlieb William Leitner, Esquire, M.A., LL.D.;
 Thomas Crampton Lewis, Esquire, M.A.;
 Charles Robert Lindsay, Esquire, late of the Bengal Civil Service,
 and Judge, Chief Court, Punjab;
 James Broadwood Lyall, Esquire, Bengal Civil Service;
 General Robert Maclagan, R.E., late Secretary to Government,
 Punjab, Public Works Department;
 Colonel Charles Alexander McMahon;
 The Ven'ble Henry James Matthew, M.A., Archdeacon of Lahore;
 Colonel Julius George Medley, R.E.;
 Philip Sandys Melvill, Esquire, C.S.I., late of the Bengal Civil
 Service, and Governor General's Agent, Baroda;
 John Andrew Erasmus Miller, Esquire;
 Pandit Motí Lál, Káthju;
 Khán Bahádur Muhammad Barkat Ali Khán;
 Khalífa Sayyad Muhammad Hussain;
 Muhammad Hyat Khán, C.S.I.;
 Rai Múl Singh;
 Nasir Ali Khan, Kazilbásh;
 Bábu Navina Chandrá Rai;
 Nawáb Nawázish Ali Khán;
 Major Edward Newbery;
 Edward O'Brien, Esquire, Bengal Civil Service;
 Henry Edmund Perkins, Esquire, Bengal Civil Service;
 Henry Meredith Plowden, Esquire, B.A., Barrister-at-law;
 Major-General Charles Pollard, R.E.;
 Baden Henry Baden-Powell, Esquire, Bengal Civil Service;
 Edward Augustus Prinsep, Esquire, late of the Bengal Civil Service,
 and Settlement Commissioner, Punjab.
 Honorary Surgeon Rahím Khán, Khán Bahádur;
 Diwán Rám Náth;
 William Henry Rattigan, Esquire, M.A., PH.D., Barrister-at-law;

Pandit Rikhi Kesh;
Rājā Sir Sāhib Dyal, K.C.S.I.;
Rai Bahādur Sāhib Singh;
Leslie Soymour Saunders, Esquire, Bengal Civil Service;
Brigade-Surgeon John Barelay Seriven, late Civil Surgeon, Lahore;
David Simsoa, Esquire, late of the Bengal Civil Service, and Judge,
Chief Court, Punjab;
John Sime, Esquire, B.A.;
Surgeon-General Charles Manners Smith, late of the Indian Medical
Service;
John Watt Smyth, Esquire, Bengal Civil Service, Barrister-at-law;
Charles Henry Spitta, Esquire, LL.B., Barrister-at-law;
Thomas Henry Thornton, Esquire, B.C.L., C.S.I., late of the Bengal
Civil Service, and Judge, Chief Court, Punjab;
Thomas William Hooper Tolbort, Esquire, Bengal Civil Service,
Barrister-at-law;
Charles Lewis Tupper, Esquire, B.A., Bengal Civil Service;
Major Isaac Peatt Westmoreland, R.E.;
Lieutenant-Colonel George Gordon Young;
William Mackworth Young, Esquire, M.A., Bengal Civil Service;
Maulvi Zia-ud-din Khān.

ACT No. II of 1883.¹

[26th January 1883.]

An Act to amend the Elephants Preservation Act, 1879.

WHEREAS it is expedient to amend the Elephants Preservation Act, 1879, in manner hereinafter appearing: It is hereby enacted as follows:—

For section 4 of the said Act the following shall be substituted, namely:—

"4. Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government."

Rights of Government with respect to certain elephants and tusks.

¹ Short title: The Elephants Preservation Act (1879) Amendment Act, 1883, see the Indian Short Titles Act, 1897 (11 of 1897).

For Statement of Objects and Reasons, see Gazette of India, 1882, Pt. V, p. 611; for Proceedings in Council, see *ibid.*, 1882, Supplement, p. 1333; *ibid.*, 1883, Supplement, p. 116.

ACT No. V OF 1883.¹

[23rd February 1883.]

An Act for the further amendment of the law relating to
 Merchant Shipping.

WHEREAS it is expedient to amend the law relating to investigation into casualties affecting ships and charges against masters, mates and engineers;

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of Merchant Shipping;

It is hereby enacted as follows:—

2* * * * * * *

Amendment
 of Act X of
 1841, sections
 2, 15,
 17 & 23.

38. In sections 2, 15, 17 and 23 of the said Act X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur the following words shall be substituted, namely:—"on conviction before a Presidency Magistrate of the first class".

ACT No. XIX OF 1883.²

[12th October 1883.]

An Act to consolidate and amend the law relating to loans of
 money by the Government for agricultural improvements.⁴

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called the Land Improvement Loans Act, 1883.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1881, Pt. V, p. 170; for Report of the Select Committee, see *ibid*, 1882, Pt. V, p. 665; for further Report of the Select Committee, see *ibid*, 1883, Supplement, pp. 257; for Proceedings in Council, see *ibid*, 1881, Supplement, pp. 221 and 279; *ibid*, 1883, Supplement, pp. 257 and 263.

² Ss. 1 to 37 of the Act were repealed by the Indian Merchant Shipping Act, 1923 (21 of 1923).

³ For the Statement of Objects and Reasons, see Gazette of India, 1882, Pt. V, p. 954; for Report of the Select Committee, see *ibid*, 1883, Supplement, p. 1296; for Proceedings in Council, see *ibid*, 1882, Supplement, pp. 1494 and 1697; *ibid*, 1883, Supplement, p. 2071.

⁴ Instruments executed by persons taking loans, or by their sureties, as security for the repayment of such loans, are exempted from stamp-duty—see The Indian Stamp Act, 1899, Sch. I, Art. 40, exemption (1), and notification under s. 9, Gen. R. and O., and s. 2 (2) of this Act.

(2) It extends to the whole of British India, but shall not come into force in any part of British India until such date as the Local Government * * * may, by notification in the local official Gazette, appoint in this behalf ^{Local extent Commencement.}

2. (1) The Land Improvement Act 1871, and Act XXI of 1876 (*An Act to amend the Land Improvement Act 1871*), shall, except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed ^{Acts XXVI of 1871 and XXI of 1876 repealed.}

(2) When in any Act, Regulation or Notification passed or issued before this Act comes into force, reference is made to either of those Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act

3 In this Act, "Collector" means the Collector of land revenue of a district, or the Deputy Commissioner, or any officer empowered by the Local Government by name or by virtue of his office to discharge the functions of a Collector² under this Act ^{Collector² defined}

4 (1) Subject to such rules as may be made under section 10, loans may be granted under this Act by such officer as may, from time to time, be empowered in this behalf by the Local Government for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person ^{Purposes for which loans may be granted under this Act.}

(2) "Improvement" means any work which adds to the letting value of land, and includes the following, namely —

- (a) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture,
- (b) the preparation of land for irrigation,
- (c) the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by

¹ The words "with the previous sanction of the Governor General in Council" were repealed by s 2 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906)

² As to the date when Act 19 of 1883 came into force in different provinces, see different local Rules and Orders

The Act has been declared in force in—

- (1) the Sonthal Parganas by the Sonthal Parganas Settlement Regulation 1872 (3 of 1872), s 3 as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), H & O Code, Vol I
- (2) the Angul District by the Angul Laws Regulation, 1913 (1 of 1913), s 3, H & O Code, Vol I
- (3) British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913) s 3, Bal Code
- (4) Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (20 of 1886), s 6, see the Burma Laws Act, 1898 (13 of 1898) Bur Code, Vol I
- (5) Arakan Hill District by the Arakan Hill District Laws Regulation, 1910 (1 of 1910), s 2, Bur Code, Vol I

³ s 3 (10) of the General Clauses Act, 1897 (10 of 1897)

water, of land used for agricultural purposes or waste-land which is culturable;

- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;
- (e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and
- (f) such other works as the Local Government ^{1*} * * *
* * * * may, from time to time, by notification in the local official Gazette, declare to be improvements for the purposes of this Act.

Mode of dealing with applications for loans.

5. (1) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the Local Government² may, from time to time, direct, calling upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections.

(2) The officer shall consider every objection submitted under subsection (1), and make an order in writing either admitting or overruling it:

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided.

Period for repayment of loans.

6. (1) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within such period from the date of the actual advance of the loan, or, when the loan is advanced in instalments, ³[from the date of the advance of the last instalment actually paid] as may, from time to time, be fixed by the rules made under this Act.

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(3) The Local Government ^{4*} * * * *, in making ^{4*} * * * the rules fixing the period, shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work

¹ The words "with the previous sanction of the Governor General in Council" were repealed by s. 2 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906).

² For notification making such direction, see different local Rules and Orders.

³ These words were substituted for the words "from the date of the actual advance of the last instalment" by s. 2 of the Land Improvement Loans (Amendment) Act, 1899 (18 of 1899).

⁴ The words "and Governor General in Council" and the words "and sanctioning" were repealed by s. 3 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906).

being paid by the generation of persons who will immediately benefit by the work

7 (1) Subject to such rules as may be made under section 10, all loans granted under this Act, all interest (if any) chargeable (thereon) and costs (if any) incurred in making the same shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely —

- (a) from the borrower—as if they were arrears of land-revenue due by him,
- (b) from his surety (if any)—as if they were arrears of land revenue due by him,
- (c) out of the land for the benefit of which the loan has been granted—as if they were arrears of land-revenue due in respect of that land,
- (d) out of the property comprised in the collateral security (if any) —according to the procedure for the realization of land-revenue by the sale of immovable property other than the land on which that revenue is due

Provided that no proceeding in respect of any land under clause (c) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under section 4 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest

(2) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1)

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it

8 A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

Order granting loan conclusive on certain points.

- (a) that the work described is an improvement within the meaning of this Act,

(b) that the person mentioned had at the date of the order a right to make such an improvement; and

(c) that the improvement is one benefiting the land specified.

Liability of
joint borrow-
ers as among
themselves.

9. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion or that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Power to
make rules.

10. The Local Government, ¹ may, from time to time, by notification in the local official Gazette, make rules² consistent with this Act to provide for the following matters, namely:—

- (a) the manner of making applications for loans;
- (b) the officers by whom loans may be granted;
- (c) the manner of conducting inquiries relative to applications for loans and the powers to be exercised by officers conducting those inquiries;
- (d) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans;
- (e) the inspection of works for which loans have been granted;
- (f) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid;
- (g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same; and
- (h) all other matters pertaining to the working of the Act.

Exemption
of improve-
ments from
assessment
to Land-
revenue.

11. When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land-revenue on the land:

Provided as follows:—

- (1) where the improvement consists of the reclamation of waste-land, or irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration

¹ The words "subject to the control of the Governor General in Council" were omitted by Schedule, Part I, of the Decentralization Act, 1914 (4 of 1914).

² For notifications making such rules, see different local Rules and Orders.

of such period as may be fixed by rules¹ to be framed by the Local Government * * * * *

- (2) nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed.

¹[12. The powers conferred on a Local Government by sections 4 (1), 5 (1) and 10 may, in a province for which there is a Board of Revenue or a Financial Commissioner, be exercised in the like manner and subject to the like conditions by such Board or Financial Commissioner, as the case may be: Provided that rules made by a Board of Revenue or Financial Commissioner shall be subject to the control of the Local Government.]

Certain powers of Local Government to be exercisable by Board of Revenue or Financial Commissioner.

THE INDIAN EXPLOSIVES ACT, 1884.

CONTENTS.

SECTIONS.

1. Short title.
- Local extent.
2. Commencement.
3. [*Repealed.*]
4. Definitions.
5. Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives.
6. Power for Governor General in Council to prohibit the manufacture, possession or importation of specially dangerous explosives.
7. Power to make rules conferring powers of inspection, search, seizure, detention and removal.
8. Notice of accidents.

¹ For such rules, see different local Rules and Orders.

² The words "with the approval of the Governor General in Council" were repealed by s. 5 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906).

³ This section was added by Schedule, Part I, of the Decentralization Act, 1914 (4 of 1914). The original section 12 was repealed by the Indian Registration Act, 1908 (16 of 1908). The application of this section has been barred in U. P. by U. P. Act 12 of 1922.

SECTIONS.

9. Inquiry into accidents.
10. Forfeiture of explosives.
11. Distress of vessel.
12. Abetment and attempts.
13. Power to arrest without warrant persons committing dangerous offences.
14. Saving for manufacture, possession, use, sale, transport or importation by Government.
15. Saving of Indian Arms Act, 1878.
16. Saving as to liability under other law.
17. Extension of definition of "explosive" to other explosive substances.
18. Procedure for making, publication and confirmation of rules.

ACT No. IV of 1884.¹

[26th February 1884.]

An Act to regulate the manufacture, possession, use, sale, transport and importation of Explosives.

WHEREAS it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives; It is hereby enacted as follows:—

- | | |
|---------------|--|
| Short title. | 1. (1) This Act may be called the Indian Explosives Act, 1884; and |
| Local extent. | (2) It extends to the whole of British India. |

¹ For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 22; for Proceedings in Council, see *ibid*, 1882, p. 1856, and *ibid*, 1883, Supplement, p. 43, and *ibid*, 1884, Supplement, p. 377.

This Act has been declared, under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazaribagh, Lohardaga (now called the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44), Palamau and Manbhum and in Pargana Dhalbhum and the Kolhan in the Singhbhum District of the Chota Nagpur Division—see Gazette of India, 1896, Pt. I, p. 972.

It has been applied to the Sonthal Parganas under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), as amended by the Sonthal Parganas Laws Regulation, 1886 (3 of 1886)—see Calcutta Gazette, 1891, Pt. I, p. 222. It has now been declared to be in force in the Sonthal Parganas by s. 3 of Regulation 3 of 1872 as amended by s. 3 of Regulation 3 of 1899, B. & O. Code.

The Act has been declared in force in Upper Burma (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Bur. Code. It had previously been extended there under s. 5 of Act 14 of 1874—see Gazette of India, 1888, Pt. I, p. 539, and was declared to come into force on 19th February 1889—see Bur. R. M.

For the law relating to explosive substances, see also the Explosive Substances Act, 1908 (6 of 1908).

2 (1) This Act shall come into force on such day¹ as the Governor General in Council, by notification in the Gazette of India, appoints Commence-
ment

3 [Repeal of portions of Act XII of 1875] Repealed by Act X of 1889²

4 In this Act unless there is something repugnant in the subject or context,— Definitions

(1) "explosive"³

(a) means gunpowder nitro glycerine, dynamite, gun cotton, blasting powder, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above mentioned or not used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect,

(b) includes fog signals fireworks fuses rockets percussion caps detonators, cartridges ammunition of all descriptions and every adaptation or preparation of an explosive as above defined

(2) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re making, altering or repairing any explosive

(3) "vessel" includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise

(4) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods, or passengers by land, in whatever manner the same may be propelled

(5) "master" includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship

(6) "import" means to bring into British India by sea or land

5 (1) The Governor General in Council may for any part of British India, and each Local Government, with the previous sanction of the Governor General in Council, may for any part of the territories under its administration, make rules⁴ consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license Power to
make rules
as to licen-
se, of the
manufacture
process or
the trans-
port

¹ The 1st July 1884—see Gazette of India 1884, Pt I p 307

² Section (7) was repealed by the Repealing and Amending Act, 1891 (32 of 1891)

³ Repealed by the Indian Ports Act 1908 (15 of 1908)

⁴ For a list of authorised explosives see Gazette of India 1917, Pt II, p 408

⁵ For rules made by the Governor General in Council under this section and section 7 to regulate the manufacture possession sale transport and importation of explosives see G. O. R. and O., Vol II, p 326

and importa-
tion of ex-
plosives.

granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

- (a) the authority by which licenses may be granted;
- (b) the fees to be charged for licenses, and the other sums (if any) to be paid for expenses by applicants for licenses;
- (c) the manner in which applications for licenses must be made, and the matters to be specified in such applications;
- (d) the form in which, and the conditions on and subject to which, licenses must be granted;
- (e) the period for which licenses are to remain in force; and
- (f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(3) The authority making rules under this section may by the rules impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules:

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

- (a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees;
- (b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees;
- (c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees; and
- (d) in any other case, two hundred rupees.

6. (1) Notwithstanding anything in the rules under the last foregoing section, the Governor General in Council may, from time to time, by notification in the Gazette of India,—

- (a) prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Governor General in Council, it is expedient for the public safety to issue the notification; ^{1*}

1 * * * *

Power for
Governor
General in
Council to
prohibit the
manufacture,
possession or
importation
of specially
dangerous
explosives.

¹ The word "and" and clause (b) were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs and the vessel containing the same, and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees and in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees.

7. (1) The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council may make rules consistent with this Act authorizing any officer either by name or in virtue of his office—

Power to make rules conferring powers of inspection, search, seizure, detention and removal

(a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act,

(b) to search for explosives therein,

(c) to take samples of any explosive found therein on payment of the value thereof, and

(d) to seize, detain, remove and, if necessary, destroy any explosive found therein.

(2) The provisions of the Code of Criminal Procedure relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section.

8. Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police-station.

Noice of accidents.

¹ See Chapter IV of the Sea Customs Act, 1878 (§ 8 of 1878).

² See now Act 5 of 1884.

Inquiry into
accidents.

9. (1) Whenever, in the opinion of a District Magistrate, Sub-divisional Magistrate or any other Magistrate specially empowered by the Local Government in this behalf, an inquiry is necessary into the cause of any accident of the description mentioned in section 8, he may either himself make the inquiry or direct a Magistrate subordinate to himself to make the inquiry.

(2) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence under the ¹Code of Criminal Procedure.

(3) The powers conferred on a Magistrate by this section may in a Presidency-town be exercised by the Commissioner of Police as well as by any Magistrate specially empowered in this behalf under sub-section (1).

Forfeiture
of explosives.

10. When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

Distress of
vessel.

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Abetment
and attempts.

12. Whoever abets, within the meaning of the Indian Penal Code, XLV the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

Power to
arrest with-
out warrant,
persons
commit-
ting dan-
gerous
offences.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port; or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

¹ See now Act 5 of 1898.

14 Nothing in this Act shall apply to the manufacture, possession, use, sale, transport or importation of any explosive—

(a) by order of the Government, or

(b) by any person employed under the Government in the execution of this Act, or as a keeper of a magazine, artisan, soldier, sailor, [airman,] policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, 1869, in the course of his employment or duty as such

Saving for manufacture, possession, use, sale, transport or importation by Government

15 Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878

Saving of Indian Arms Act, 1878

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a license granted under the said Indian Arms Act

16 Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules

Saving as to liability under other law

Provided that a person shall not be punished twice for the same offence

17. The Governor General in Council may, from time to time by notification in the Gazette of India, declare that any substance which appears to the Governor General in Council to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act,¹ and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act

Extension of definition of "explosive" to other explosive substances

18 (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby

Procedure for making publication and confirmation of rules

(2) The publication shall be made in such manner as the Governor General in Council, from time to time by notification in the Gazette of India,² prescribes

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration

¹ This word was inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927)

² Prior to 1 with certain exceptions has been declared to be an explosive within the meaning of this Act, see Gazette of India, 1926, Pt. I, p. 1264

³ For mode prescribed, see Gazette of India, 1927, Pt. I, p. 703, for Upper Burma, see Bur. R. M.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect if it is made by the Governor General in Council until it has been published in the Gazette of India, and if it is made by the Local Government until it has been published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

ACT No. IX of 1884¹.

[16th May 1884.]

An Act to amend the Legal Practitioners Act, 1879, * * * * *

WHEREAS it is expedient to amend the Legal Practitioners Act, 1879, in manner in this Act appearing;

* * * * *;

It is hereby enacted as follows:—

1. (1) This Act may be called the Legal Practitioners Act, 1884; ^{*4} Short title.

^{1*} * * * *

2. In section 4 of the Legal Practitioners Act, 1879, for the words "as an advocate on the roll of the Chief Court of the Punjab" the words "under section 41 of this Act" shall be substituted. ^{Amendment of section 4 of Act XVIII of 1879.}

3. [Addition of a proviso to section 13 of same Act.] Repealed by the Repealing and Amending Act, 1914 (10 of 1914).

4. In section 14 of the same Act, before the words "any District Magistrate" the words "any Judge of a Court of Small Causes of a Presidency-town" shall be inserted. ^{Amendment of section 14 of same Act.}

5. In section 25 of the same Act, after the word "annexed" the words "and of such description as the Local Government may from time to time prescribe" shall be inserted. ^{Amendment of section 25 of same Act.}

¹ For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 658; for Proceedings in Council, see *ibid*, Supplement, pp. 1598 and 1651, and *ibid*, 1884, Supplement, p. 847.

² The words "and the Indian Stamp Act, 1879" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

³ This part of the preamble was repealed by the Repealing and Amending Act, 1914 (10 of 1914).

⁴ The word "and" and sub-section (2) were repealed by *ibid*.

6. To the first clause of section 27 of the same Act the following shall be added, namely:—"and in respect of the fees of his adversary's revenue-agent appearing, pleading or acting under section 10".

Amendment
of section 27
of same Act

7. In section 38 of the same Act, for the words "by the Chief Court of the Punjab" the words "under section 41 of this Act" shall be substituted.

Amendment
of section 38
of same Act

8. For section 41 of the same Act the following section shall be substituted, namely:—

New section
substituted
for section 41
of same Act

"41. (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

Power for
certain High
Courts to
enrol advoc-
ates

"(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

"(3) The High Court may dismiss any advocate so enrolled or suspend him from practice.

"(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Punjab, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government."

9. To the same Act the following section shall be added, namely:—

New section
added to
same Act.

"12. Act I of 1846 (for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company) and Act XX of 1853 (to amend the law relating to pleaders in the Courts of the East India Company) are repealed."

Repeal of
Act I of
1846 and XX
of 1853.

10. (1) (A) enactment of *Schedule I and II of Act I of 1879* (Duty on enrolment of advocates), *Rep. by the Indian Stamp Act, 1899* (II of 1899).

(2) *Rep. by the Republic of India, Amending Act, 1891* (XII of 1891).

[24th July 1884.]

An Act to amend and provide for the extension of the Northern India Takkávi Act, 1879.

Preamble.

WHEREAS it is expedient to amend the Northern India Takkávi Act, 1879, and provide for its extension to any part of British India; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called the Agriculturists' Loans Act, 1884; and

Commence-
ment.

(2) It shall come into force on the first day of August 1884.

Local extent.

2. (1) This section and section 3 extend to the whole of British India.

(2) The rest of this Act extends in the first instance only to the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer.

(3) But any other Local Government may, from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.²

Repeal of
Act X of
1879, and
sections 4
and 5 of Act
XV of 1880.

3. (1) On and from the day on which this Act comes into force, the Northern India Takkávi Act, 1879, and sections 4 and 5 of the Bombay Revenue Jurisdiction Act, 1880, shall, except as regards the recovery of advances made before this Act comes into force and of the interest thereon, be repealed.

(2) All rules made under those Acts shall be deemed to be made under this Act.

Power for
Local Gov-
ernment to
make rules.

³4. (1) The Local Government ⁴for, in a province for which there is a Board of Revenue or Financial Commissioner, such Board or Financial

¹ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V, p. 2; for Proceedings in Council, see *ibid*, Supplement, pp. 41, 165 and 1130.

² Act XII of 1884 has by notification been extended to—

the lower Province of Bengal, see Calcutta Gazette, 1885, Pt. I, p. 555;
the Madras Presidency, see Fort St. George Gazette, 1886, Pt. I, p. 138;
the Sonthal Parganas, see Calcutta Gazette, 1885, Pt. I, p. 905;
the Province of Coorg, see Coorg District Gazette, 1887, Pt. I, p. 670.

S. 2 has been declared in force under s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913), in British Baluchistan; see Bal. Code.

The Act has been declared in force in the whole of Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), Bur. Code. S. 2 of the Act was previously declared in force by notification under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874), see Burma Gazette, 1896, Pt. I, p. 112, and under that section, ss. 4, 5 and 6 of the Act were extended there, see *ibid*, p. 121; and in the Arakan Hill District by s. 2 of Regulation 1 of 1916. Bur. Code. The Act has been extended to Sadiya Frontier Tract and Balipora Frontier Tract, see Gazette of India, 1919, Pt. II, p. 1534.

³ Section 4 has been amended in its application to the United Provinces by U. P. Act 12 of 1922.

⁴ These words were inserted by Schedule, Part I, of the Decentralization Act, 1914 (4 of 1914).

Commissioner, subject to the control of the Local Government] may, from time to time, * * * make rules² as to loans to be made to owners and occupiers of arable land for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects

(2) All such rules shall be published in the local official Gazette

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety

6. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which is among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked, or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which is among themselves each of those persons is bound to contribute

ACT No. II OF 1885.³

[30th January 1887]

An Act to amend the Negotiable Instruments Act, 1881

WHEREAS it is expedient to amend the Negotiable Instruments Act, 1881, in manner hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Negotiable Instruments Act, 1885

Short title.

¹ The words "subject to the control of the Governor-General in Council" were omitted by Schedule, Part I, of the Decentralization Act, 1914 (1 of 1914)

² For rules under this power, see different local Rules and Orders

³ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V, p. 19, for Report of the Select Committee, see *ibid.*, 1885, Pt. V, p. 30; and for Proceedings in Council, see *ibid.*, 1884, Supplement, pp. 311 and 322, and *ibid.*, 1885, Supplement, p. 153

This Act is now in force in the whole of Upper Burma (except the Shan States) as amended by the original Act 23 of 1881, declared in force there by the Burma Laws Act, 1882 (17 of 1882) see the First Schedule and s. 4, Bur. Code

Act 2 of 1885 had been previously declared in force in the Town of Mandalay only in Upper Burma by the Upper Burma Laws Act, 1885 (20 of 1885), s. 6 (1), now repealed by Act 17 of 1886

Amendment
of section 7,
Act XXVI
of 1881.

2. In the fourth paragraph of section 7 of the Negotiable Instruments Act, 1881, for the words "When acceptance is refused and the bill is protested for non-acceptance" the following shall be substituted, namely:—"When a bill of exchange has been noted or protested for non-acceptance or for better security".

New section
inserted after
section 45 of
the same Act.

3. After section 45 of the same Act the following shall be inserted:—

Holders'
right to dup-
licate of lost
bill.

"45A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill, alleged to have been lost shall be found again.

"If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so."

Addition to
sections 61
and 64 of the
same Act.

4. To section 61. and the first paragraph of section 64, of the same Act, the following shall be added:—

"Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient."

Addition to
section 101
of the same
Act.

5. To section 101 of the same Act the following shall be added:—

"A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter."

Section insert-
ed after sec-
tion 104 of
the same Act.

6. After section 104 of the same Act the following shall be inserted:—

When noting
equivalent to
protest.

"104A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting."

7. [Section 108 of the same Act, in part, repealed.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

Amendment
of section 109
of same Act.

8. In the same Act, section 109,—

(a) for the words "in the presence of a notary public subscribe the bill with his own hand and" the following shall be substituted, namely:—"by writing on the bill under his hand".

(b) [Repeal of last twelve words of section 109.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

9 In the same Act section 113, after the words "the person so paying" the words "or his agent in that behalf" shall be inserted Amendment of section 113 of same Act

10 After Chapter XVI of the same Act the following shall be inserted — New Chapter added to same Act

CHAPTER XVII

"NOTARIES PUBLIC"

"138 The Governor General in Council may from time to time, by notification in the official Gazette, appoint any person by name or by virtue of his office to be a notary public under this Act and to exercise his functions as such within any local area and may by like notification, remove from office any notary public appointed under this Act Power to appoint notaries public

"139 The Governor General in Council may from time to time by notification in the official Gazette make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may by such rules (among other matters) fix the fees payable to such notaries Power to make rules for notaries public

ACT No III of 1885

[30th January 1887]

An Act to amend the Transfer of Property Act, 1882

WHEREAS it is expedient to amend the Transfer of Property Act 1882, It is hereby enacted as follows —

1 For the fifth clause of section 1 of the said Act the following shall be substituted, namely — Amendment of section 1 of Act IV of 1882

"And any Local Government may, with the previous sanction of the Governor General in Council, from time to time by notification in

¹ Short title, "The Transfer of Property Act (1882) Amendment Act, 1885," see the Indian Short Titles Act 1897 (14 of 1897)

For Statement of Objects and Reasons, see Gazette of India 1884, Pt V, p 475, for Report of the Select Committee see *ibid*, 1885, Pt V, p 37, and for Proceedings in Council see *ibid* 1884 Supplement, pp 1169 and 1273, and *ibid*, 1885, Supplement p 185

This Act is in force—

(1) in the whole of the territories other than the Scheduled Districts, under the administration of the Government of Bombay, see Bombay Government Gazette 1892 Pt I, p 1071,

(2) in the area included within the local limits of Rangoon Town as from time to time defined for the purposes of the Lower Burma Courts Act 1900 (VI of 1900) and the Municipalities of Maulmein, Bassein and Akyab as constituted from time to time under the Burma Municipal Act 1898 (Bur Act III of 1898) see Burma Gazette 1901 Pt I, pp C23 and C24

as amending the Transfer of Property Act 1882 (IV of 1882). As regards its applicability to the whole of Lower Burma in so far as it affects sections 1, 2, 10 and 123 of the Transfer of Property Act 1882 see Notification No. 28, Burma Gazette 1901 Pt I p 64

ACT No. XII of 1885¹.

[22nd July 1885.]

An Act to amend the law relating to the carriage of passengers by sea.

WHEREAS by section 99 of an Act of the Imperial Parliament called ^{18 & 19} "The Passengers Act, 1855,"^{c. 119.} it is enacted that "it shall be lawful for the Governor General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act or any part thereof shall apply to the carriage of passengers upon any voyage, from any ports or places within the territories of British India, to be specified in such Act or Acts to any other places whatsoever, to be also specified in such Act or Acts:" and it is thereby also enacted that "on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall be specified. The provisions of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced;"

And whereas certain parts of the said Act of Parliament were by Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) made applicable to the carriage of passengers upon certain specified voyages;

And whereas by an Act of the Imperial Parliament called ^{26 & 27} "The Passengers Act Amendment Act, 1863,"^{c. 51.} certain parts of the Passengers ^{18 & 19} Act, 1855, which were so made applicable, have been amended, and ^{c. 119.} it is provided that the said Acts of the Imperial Parliament shall be construed together as one Act;

And whereas it is expedient that the amendments so made in the Passengers Act, 1855, should also be made in the parts of that Act so made applicable, and it is also expedient to apply those parts so amended to the carriage of passengers upon certain voyages not specified in Act II of 1860;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Sea Passengers Act, 1885; and

(2) It shall come into force on the first day of October, 1885.

¹ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V, p. 602; for Report of the Select Committee, see *ibid*, 1885, Pt. IV, p. 185; and for Proceedings in Council, see *ibid*, 1884, Supplement, pp. 1652 and 1709, and *ibid*, 1885, Supplement, p. 1179.

On the coming into force of s. 146 of the Indian Merchant Shipping Act, 1923 (21 of 1923), this Act will be repealed.

² This Act has been repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., C. 60), s. 745, see Collection of Statutes, Vol. II.

2 [Repeal of Act II of 1869] Rep by the Repealing and Amending Act, 1891 (VII of 1891)

3 The provisions contained in sections 4, 5 and 6 of this Act, and the schedule hereto annexed (being parts of the Passengers Act 1855 as amended by the Passengers Act Amendment Act 1863), are declared applicable to the carriage of passengers upon the following voyages namely —

Certain provisions of the Statutes made applicable to specified voyages from India

(a) voyages from the ports of Calcutta Madras and Bombay to the British Colonies of Mauritius Jamaica British Guiana Trinidad St Lucia Grenada St Vincent Natal St Kitts Nevis and Fiji,

(b) voyages from the ports of Calcutta Madras and Bombay to the French Colonies of Reunion Martinique Guadeloupe and its dependencies and Guiana,

(c) voyages from the ports of Calcutta Madras and Bombay to the Netherlands colony of Dutch Guiana

(d) voyages from the ports of Calcutta Madras and Bombay to the Danish colony of St Croix

(e) voyages under the Native Passenger Ships Act 1876 from Calcutta Madras Bombay Karachi Rangoon and other ports in British India to the Straits Settlements to the protected Native States adjoining the Straits Settlements to Australia and to ports in the Red Sea Gulf of Aden or Persian Gulf and on the East Coast of Africa

4 If the passengers or cabin passengers upon any such voyage as is specified in the last preceding section be taken off from the ship carrying them or are picked up at sea from any boat raft or other vessel, it shall be lawful if the port or place to which they are conveyed is in any of Her Majesty's colonial possessions for the Governor of such colony, or for any person authorized by him for the purpose, or, if in any foreign country for Her Majesty's Consular Officer at such port or place therein to defray all or any part of the expenses thereby incurred

Governors or Consuls may pay expenses of passengers taken off passenger-ship

5 If any passenger or cabin passenger of any such passenger ship as afore said without any neglect or default of his own, finds himself within any colonial or foreign port or place other than that for which the ship was originally bound or at which he or the Immigration Agent or any public officer or other person on his behalf has contracted that he should land it shall be lawful for the Governor of the colony, or for any person authorized by him for the purpose or for Her Majesty's Consular Officer at the foreign port or place as the case may be to forward the passenger or cabin passenger to his intended destination

Governors or Consuls may send on passengers if the Master of the ship fail to do so.

unless the master of the ship, within forty-eight hours of the arrival of such passenger or cabin-passenger, gives to the Governor or Consular Officer, as the case may be, a written undertaking to forward or carry on within six weeks thereafter the passenger or cabin-passenger to his original destination, and unless the master accordingly forwards or carries him on within that period.

Expenses incurred under sections 4 and 5 to be a Crown debt

6. (1) All expenses incurred under the last two preceding sections, or either of them, by or by the authority of a Governor or Consular Officer, or other person as therein respectively mentioned, including the cost of maintaining the passengers and cabin-passengers until forwarded to their destination, and of all necessary bedding, provisions and stores, shall become a debt to Her Majesty and her successors from the owner, charterer and master of the ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts.

(2) A certificate in the form given in the schedule hereto annexed or as near thereto as the circumstances of the case will admit, purporting to be under the hand of any such Governor or Consular Officer (as the case may be), stating the total amount of the expenses, shall, in any suit or other proceeding for the recovery of the debt, be received in evidence without proof of the handwriting or of the official character of the Governor or Consular Officer, and shall be deemed sufficient evidence of the amount of the expenses, and that the same were duly incurred;

nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant specially pleads and duly proves that the certificate is false or fraudulent, or specially pleads and duly proves any facts showing that the expenses were not duly incurred:

Provided, nevertheless, that in no case shall any larger sum be recovered on account of the expenses than a sum equal to twice the total amount of passage-money received or due to and recoverable by or on account of the owner, charterer or master of the passenger-ship or any of them from or on account of the whole number of passengers and cabin-passengers who may have embarked in the ship; which total amount of passage-money shall be proved by the defendant if he will have the advantage of this limitation of the debt; but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage-money, or to any compensation for loss of passage.

7. No policy of assurance effected in respect of any passages or of Insurance. any passage or compensation money by any person by this Act made liable in the events aforesaid to provide those passages or to pay that money, or in respect of any other risk under this Act, shall be deemed invalid by reason of the nature of the risk or interest sought to be covered by the policy of assurance.

THE SCHEDULE

FORM OF GOVERNOR'S OR CONSUL'S CERTIFICATE OF EXPENDITURE IN THE CASE OF PASSENGERS SHIPWRECKED, ETC.

(Section 6)

I hereby certify that acting under, and in conformity with, the provisions of the Indian Sea Passengers Act, 1885, I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions and stores (a), and in forwarding to their destination

(a) N.B.—1. If more passengers were rescued than forwarded, or if bedding, etc., was not supplied, alter the certificate to suit the facts of the case.

(b) N.B.—2. Omit words in brackets when necessary.

(c) N.B.—3. State generally the nature of the disaster and where it occurred. But if the passengers were only left behind without any default of their own, state the fact accordingly.

passengers [including cabin-passengers (b),] who were proceeding from to in the passenger-ship which was wrecked at sea, etc. (c).

And I further certify, for the purposes of the sixth section of the said Indian Sea Passengers Act, 1885, that the total amount of such expenses is , and that such expenses were duly incurred by me under the said Act.

Given under my hand this day of , 18 .

*Governor of, etc., (or, as the case may be
Her Britannic Majesty's Consul at*

THE INDIAN TELEGRAPH ACT, 1885.

CONTENTS.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title, local extent and commencement.
2. Repeal and savings.
3. Definitions.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

4. Exclusive privilege in respect of telegraphs, and power to grant licenses.
5. Power for Government to take possession of licensed telegraphs and to order interception of messages.
6. Power to establish telegraph on land of Railway Company.
7. Power to make rules for the conduct of telegraphs.
8. Revocation of licenses.
9. Government not responsible for loss or damage.

PART III.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

10. Power for telegraph authority to place and maintain telegraph lines and posts.
11. Power to enter on property in order to repair or remove telegraph lines or posts.

Provisions applicable to Property vested in or under the Control or Management of Local Authorities.

12. Power for local authority to give permission under section 10, clause (c), subject to conditions.
13. Power for local authority to require removal or alteration of telegraph line or post.
14. Power to alter position of gas or water pipes or drains.
15. Disputes between telegraph authority and local authority.

Provisions applicable to other Property.

SECTIONS.

- 16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.
- 17. Removal or alteration of telegraph line or post on property other than that of a local authority

Provisions applicable to all Property

- 18. Removal of trees interrupting telegraphic communication
- 19. Telegraph lines and posts placed before the passing of this Act
- 19A. Person exercising legal right likely to damage telegraph or interfere with telegraphic communication to give notice

PART IV.

PENALTIES

- 20. Establishing, maintaining or working unauthorized telegraph.
- 20A. Breach of condition of license
- 21. Using unauthorized telegraphs
- 22. Opposing establishment of telegraphs on railway land.
- 23. Intrusion into signal-room, trespass in telegraph office or obstruction
- 24. Unlawfully attempting to learn contents of messages
- 25. Intentionally damaging or tampering with telegraphs
- 25A. Injury to or interference with a telegraph line or post
- 26. Telegraph officer or other official making away with or altering or unlawfully intercepting or disclosing messages, or divulging purport of signals
- 27. Telegraph officer fraudulently sending messages without payment
- 28. Misconduct
- 29. Sending fabricated message
- 29A. Penalty.
- 30. Retaining a message delivered by mistake
- 31. Bribery.
- 32. Attempts to commit offences

PART V

SUPPLEMENTAL PROVISIONS

- 33. Power to employ additional police in places where mischief to telegraphs is repeatedly committed.
- 34. Application of Act to Presidency-towns and Rangoon.

ACT No. XIII OF 1885.¹

[22nd July 1885.]

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title,
local extent
and com-
mencement.

1. (1) This Act may be called the Indian Telegraph Act, 1885:

²[(2) It extends to the whole of British India, including the Sonthal Parganas and the Pargana of Spiti, and it applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India,

(b) all other British subjects within the territories of any Native State in India, and

(c) all servants of the King, whether British subjects or not, within the territories of any Native State in India.]

(3) It shall come into force on the first day of October 1885.

Repeal and
savings.

2. The Indian Telegraph Act, 1876, is hereby repealed.

I of

But all licenses granted and rules made under that Act or any Act thereby repealed, and now in force, shall, so far as they could be granted or made under this Act, be deemed to have been respectively granted and made hereunder.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) “telegraph” means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for ³[making, transmitting or

¹ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V, p. 481; for Report of the Select Committee, see *ibid*, 1885, Pt. IV, p. 192; and for Proceedings in Council, see *ibid*, 1884, Supplement, pp. 1169 and 1296, and *ibid*, 1885, Supplement, p. 1181.

This Act was declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (20 of 1886), s. 6 (1), and is in force there under s. 4 and the First Schedule to the Burma Laws Act, 1898 (13 of 1898), Bur. Code, by which Act 20 of 1886 has been repealed; in the Arakan Hill District by s. 2 of Regulation 1 of 1916, Bur. Code; in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, B. & O. Code; in British Baluchistan, see s. 3 and Schedule to the British Baluchistan Laws Regulation, 1913 (2 of 1913), Bal. Code; in the Angul District under s. 3 of the Angul Laws Regulation, 1913 (3 of 1913), B. & O. Code; and in the Pargana of Manpur by the Manpur Laws Regulation, 1926 (2 of 1926), s. 2 and the Schedule.

² This sub-section was substituted by s. 2 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

³ These words were substituted for the words “transmitting or making” by s. 3, *ibid*.

receiving] telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism

(2) "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established maintained or worked by the Government or by a person licensed under this Act

(3) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered

(4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same

(5) "post" means a post pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line

(6) "telegraph authority" means the Director General of [Posts and Telegraphs,] and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act

(7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund

PART II

PRIVILEGES AND POWERS OF THE GOVERNMENT

4 (1)² Within British India the Governor General in Council shall have the exclusive privilege of establishing, maintaining and working telegraphs

Provided that the Governor General in Council may grant a license, on such conditions and in consideration of such payments as he thinks fit, to any person to establish, maintain or work a telegraph within any part of British India.

²[Provided further that the Governor General in Council may, by rules made under this Act and published in the Gazette of India, permit, subject to such restrictions and conditions as he thinks fit, the establishment, maintenance and working—

(a) of wireless telegraphs on ships within Indian territorial waters, and

¹ These words were substituted for the word "Telegraphs" by s. 2 of the Indian Post Office and Telegraph (Amendment) Act 1911 (11 of 1911)

² Section 4 was renumbered section 4 (1) and the second proviso and sub-section (2) were added to that section by s. 3 of the Indian Telegraph (Amendment) Act 1914 (7 of 1914)

Exclusive
privilege in
respect of
telegraphs,
and power
to grant
licenses

(Part II.—Privileges and Powers of the Government.)

(b) of telegraphs other than wireless telegraphs within any part of British India.

(2) The Governor General in Council may, by notification in the Gazette of India, delegate to the telegraph authority all or any of his powers under the first proviso to sub-section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Governor General in Council may, by the notification, think fit to impose.]

Power for
Government
to take
possession of
licensed tele-
graphs and
to order
interception
of messages.

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the Governor General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor General in Council, may—

(a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act;
or

(b) order that any message or class of messages to or from any person or class of persons or relating to any particular subject brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

Power to
establish
telegraph on
land of
Railway
Company.

6. Any Railway Company, on being required so to do by the Governor General in Council, shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

Power to
make rules
for the con-
duct of tele-
graphs.

7. (1) The Governor General in Council may, from time to time, by notification in the Gazette of India, make rules¹ consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

(a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted;

¹ For the Indian Telegraph Rules, 1927, issued under this section, see Notification No. 4T, dated 21st December 1926, Gazette of India, 1926, Pt. I, p. 1404.

(Part II.—Privileges and Powers of the Government. Part III.—Powers to place Telegraph Lines and Posts.)

- (b) the precautions to be taken for preventing the improper interception or disclosure of messages,
- (c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved; and
- (d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer

(3) When making rules for the conduct of any telegraph established, maintained or worked by any person licensed under this Act, the Governor General in Council may, by the rules, prescribe fines for any breach of the same:

Provided that the fines so prescribed shall not exceed the following limits, namely:—

- (i) when the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;
- (ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (i)

8. The Governor General in Council may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder Revocation of license

9. The Secretary of State for India in Council shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently Government not responsible for loss or damage

PART III.

POWERS TO PLACE TELEGRAPH LINES AND POSTS.

10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property: Power for telegraph authority to place and maintain telegraph lines and posts.

Provided that—

- (a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph estab-

(Part III.—Powers to place Telegraph Lines and Posts.)

lished or maintained by the Government, or to be so established or maintained;

- (b) the Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and,
- (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
- (d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Power to enter on property in order to repair or remove telegraph lines or posts.

11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Provisions applicable to Property vested in or under the Control or Management of Local Authorities.

Power for local authority to give permission under section 10, clause (c), subject to conditions

12. Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

Power for local authority to require removal or alteration of telegraph line or post.

13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

Power to alter position of gas or

14. The telegraph authority may, for the purpose of exercising the power conferred upon it by this Act in respect of any property vested

(Part III —Powers to place Telegraph Lines and Posts)

in or under the control or management of a local authority, alter the position thereunder on any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain) water pipes or drains.

Provided that—

(a) when the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority to the person under whose control the pipe or drain is,

(b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent

15 (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10 clause (c) or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13 or otherwise in respect of the exercise of the powers conferred by this Act it shall be determined by such officer as the Local Government may appoint either generally or specially in this behalf Disputes between telegraph authority and local authority

(2) An appeal from the determination of the officer so appointed shall lie to the Local Government and the order of the Local Government shall be final

Provisions applicable to other Property

16 (1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion order that the telegraph authority shall be permitted to exercise them Exercise of powers conferred by section 1, and disputes as to compensation in case of property other than that of a local authority

(2) If, after the making of an order under sub section (1), any person resists the exercise of those powers or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code 460

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him

(Part III.—Powers to place Telegraph Lines and Posts.)

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same.

17. (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level, or for the alteration of its form; and the order so made shall be final.

Provisions applicable to all Property.

18. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate

Removal or alteration of telegraph line or post on property other than that of a local authority.

Removal of trees interrupting tele-

(Part III.—Powers to place Telegraph Lines and Posts.)

of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit. graphic communication.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the Government, shall be deemed to have been placed in exercise of the powers conferred by this Act, and after observance of all the requirements of, this Act. telegraph lines and posts placed before the passing of this Act.

[19A. (1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interfere with telegraphic communication, shall give not less than one month's notice in writing of the intended exercise of such right to the telegraph authority, or to any telegraph officer whom the telegraph authority may empower in this behalf. Person exercising legal right likely to cause damage telegraph, or interfere with telegraphic communication to give notice.

(2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the *bona fide* intention of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the provisions of the said sub-section if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section.]

[19B. The Governor General in Council may, by notification in the Gazette of India, confer upon any licensee under section 4, in respect Power to confer upon licensee

¹ Sections 19A and 19B were inserted by s. 3 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

(Part III.—Powers to place Telegraph Lines and Posts. Part IV.—Penalties.)

powers of telegraph authority under this Part.

of the extent of his license and subject to any conditions and restrictions which the Governor General in Council may think fit to impose and to the provisions of this Part, all or any of the powers which the telegraph authority possesses under this Part with regard to a telegraph established or maintained by the Government or to be so established or maintained:

Provided that the notice prescribed in section 19A shall always be given to the telegraph authority or officer empowered to receive notice under section 19A (1).]

PART IV.

PENALTIES.

Establishing, maintaining or working unauthorized telegraph.

¹[20. (1) If any person establishes, maintains or works a telegraph within British India in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and, in any other case, with a fine which may extend to one thousand rupees.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.

(3) When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to His Majesty.]

Breach of condition of license.

²[20A. If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.]

Using unauthorized telegraphs.

21. If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked, in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph, or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

Opposing establishment of tele-

22. If a Railway Company or an officer of a Railway Company neglects or refuses to comply with the provisions of section 6, it or he shall

¹ This section was substituted by s. 6 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

² This section was inserted by s. 7, *ibid*.

be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues

23 If any person—

- (a) without permission of competent authority, enters the signal-room of a telegraph office of the Government or of a person licensed under this Act or
- (b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or
- (c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or
- (d) wilfully obstructs or impedes any such officer or servant in the performance of his duty

Intrusion into signal room tree pass of telegraph office or obstruction.

he shall be punished with fine which may extend to five hundred rupees

24 If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message or of committing any offence punishable under this Act he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year

Unlawfully attempting to learn contents of messages

25 If any person, intending—

- (a) to prevent or obstruct the transmission or delivery of any message, or
- (b) to intercept or to acquaint himself with the contents of any message or
- (c) to commit mischief,

Intentionally damaging or tampering with telegraphs

damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof

he shall be punished with imprisonment for a term which may extend to three years, or with fine or with both

[25A If, in any case not provided for by section 25 any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions of this Act he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also if the telegraphic communication is by reason of the damage so caused interrupted be punishable with a fine which may extend to one thousand rupees

Injury to or interference with telegraph line or post

¹ This section was inserted by s. 8 of the Indian Telegraph Amendment Act 1914 (C of 1914)

(Part IV.—Penalties.)

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of section 19A (1).]

Telegraph officer or other official making away with or altering or unlawfully intercepting or disclosing messages, or divulging purport of signals.

26. If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

- (a) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery; or
- (b) wilfully and otherwise than in obedience to an order of the Governor General in Council or of a Local Government, or of an officer specially authorized by the Governor General in Council to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or
- (c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telegraph officer fraudulently sending messages without payment.

27. If any telegraph officer transmits by telegraph any message on which the charge prescribed by the Government, or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the Government or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Misconduct.

28. If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Sending fabricated message.

29. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

¹[29A If any person, without due authority,—

Penalty

(a) makes or issues any document of a nature reasonably calculated to cause it to be believed that the document has been issued by, or under the authority of, the Director General of ²[Posts and Telegraphs] or

(b) makes on any document any mark in imitation of, or similar to, or purporting to be, any stamp or mark of any telegraph office under the Director General of ²[Posts and Telegraphs], or a mark of a nature reasonably calculated to cause it to be believed that the document so marked has been issued by or under the authority of, the Director General of ²[Posts and Telegraphs],

he shall be punished with fine which may extend to fifty rupees]

30. If any person fraudulently retains or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both

Retaining a message delivered by mistake

31. A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code, and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act

800

British

32. Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence

Attempts to commit offences

PART V

SUPPLEMENTARY PROVISIONS

33. (1) Whenever it appears to the Local Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police force in that place is thereby rendered necessary, the Local Government may send such additional police force as it thinks fit to the place, and employ the same there so long as, in the opinion of that Government, the necessity of doing so continues

Power to employ additional police in places where mischief to telegraphs is repeatedly committed.

¹ This section was inserted by s. 9 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914)

² These words were substituted for the word "Telegraphs" by s. 2 of the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914)

(Part V.—Supplemental Provisions.)

Land Acquisition (Mines). [1885: Act XVIII.]

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the Local Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(4) The Local Government may, by order in writing, define the limits of any place for the purposes of this section.

¹[34. (1) This Act, in its application to the Presidency-towns, shall be read as if for the words "District Magistrate" in section 16, sub-section (1), and section 17, sub-sections (2) and (3), for the words "Magistrate of the first or second class" in section 18, sub-section (1) [and section 19A. sub-section (2)] and for the word "Magistrate" in section 18, sub-section (2), there had been enacted the words "Commissioner of Police." and for the words "District Judge," in section 16, sub-sections (3), (4) and (5), the words "Chief Judge of the Court of Small Causes".

(2) Section 16, in its application to the town of Rangoon, shall be read as if for the words "District Judge," wherever they occur in that section, there had been enacted the words "Judge of the Court of Small Causes".

(3) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (3) of section 16 shall be the same as would be payable under the Court-fees Act, 1870, in respect of such an application to a District Judge beyond the limits of a Presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (3) or sub-section

(4) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882.]

VII of 1870.

XV of 1882.

THE LAND ACQUISITION (MINES) ACT, 1885.

CONTENTS.

SECTIONS.

1. Short title, commencement and local extent.

¹ Section 31 was added by the Indian Telegraphs (Presidency-towns) Act, 1888² (11 of 1888).

² These words were inserted by s. 10 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

SECTIONS

- 2 Saving for mineral rights of the Government
- 3 Declaration that mines are not needed
- 4 Notice to be given before working mines lying under land
- 5 Power to prevent or restrict working
- 6 Mode of determining persons interested and amount of compensation
- 7 If Local Government does not offer to pay compensation, mines may be worked in a proper manner
- 8 Mining communication
- 9 Local Government to pay compensation for injury done to mines,
- 10 and also for injury arising from any airway, or other work
- 11 Power to officer of Local Government to enter and inspect the working of mines
- 12 Penalty for refusal to allow inspection
- 13 If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land required
- 14 Construction of Act when land acquired has been transferred to a local authority or Company
- 15 Pending cases
- 16 Definition of local authority and Company
- 17 This Act to be read with Land Acquisition Act, 1870

 ACT No XVIII of 1885¹

[16th October 1885]

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870²

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870³, It is hereby enacted as follows:—

1. (1) This Act may be called the Land Acquisition (Mines) Act, 1885, and

Short title,
commence-
ment and
local extent

¹ For the Statement of Objects and Reasons see Gazette of India, 1885, Pt V, p. 115, for Report of the Select Committee see P. P. N. 1, 204 and for Proceedings in Council see P. P. N. Supplement 11, 34 and 1130 and P. P. N. Extra Supplement dated 14th March 1885, p. 11

This Act has been declared in force in the South Malabar Parganas by the South Malabar Parganas Settlement Regulation (III of 1872) s. 3 as amended by the South Malabar Parganas Justice and Laws Regulation 1879 (III of 1879) s. 3 B & O Code the Angul District see the Schedule to the Angul Laws Regulation 1913 (I of 1913) B & O Code

² See now the Land Acquisition Act, 1924 (I of 1924)

(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal; but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

Saving for
mineral
rights of the
Government.

Declaration
that mines
are not
needed.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

3. (1) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870,¹ that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870,¹ and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11² of the said Land Acquisition Act in respect of the mines, and may—

- (a) when he makes an award under section 14² of that Act, insert such a statement in his award;
- (b) when he makes a reference to the Court under section 15³ of that Act, insert such a statement in his reference; or
- (c) when he takes possession of the land under section 17⁴ of that Act, publish such a statement in such manner as the⁵ [Local Government] may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

Notice to be
given before
working
mines lying
under land.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government

¹ See now s. 6 of the Land Acquisition Act, 1894 (1 of 1894).

² See now s. 11, *ibid.*

³ See now s. 19, *ibid.*

⁴ See now s. 17, *ibid.*

⁵ These words were substituted for the words "Governor General in Council" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

notice in writing of his intention so to do sixty days before the commencement of working

5 (1) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose, and

(2) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon the Local Government may publish * * * a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten or that part thereof, to all persons having an interest in the same or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify

(3) If the declaration mentioned in case (a) is made, then those mines or minerals or that part thereof, shall not thereafter be worked or gotten by any person

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government

2[(5) Every declaration made under this section shall be published in such manner as the Local Government may direct]

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5 the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870,³ for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

7. (1) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a

¹ The words "in such manner as the Governor General in Council may, from time to time direct" were omitted by Sch. I of the Revision Act 1920 (No. 1 of 1920)

² This sub-section was added by s. 2 and Sch. I of

³ See now the Land Acquisition Act 1924 (1 of 1924)

Mode of determining persons interested and amount of compensation.

If Local Government does not order to pay compensation, mines

may be work. declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

Mining communications.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the ¹[Local Government] in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Local Government to pay compensation for injury done to mines;

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner

¹ These words substituted for the words "Governor General in Council" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870¹

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him

and also for injury arising from any airway or other work

11 For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith, and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked

Power to officer of Local Government to enter and inspect the working of mines

12 If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees

Penalty for refusal to allow inspection.

13 If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto, and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier

If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired

14 When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested, by operation of law in a local authority

Construction of Act when land acquired has been

¹ See now the Land Acquisition Act, 1948 (1 of 1948)

transferred
to a local
authority or
Company.

or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections ¹[except in section 5, sub-section (5), and section 8,] the words "the local authority or Company, as the case may be, which has acquired the land," were substituted.

Pending
cases.

15. (1) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act, 1870,² are pending at the X of 1870. time when this Act comes into force, unless before that time the Collector has made, in respect of the land, an award under section 14³ or a reference to the Court under section 15³ of that Act, or has taken possession of the land under section 17³ of the same.

(2) When the Collector has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870,² to act for persons so interested, who have X of 1870. attended or may attend in the course of the proceedings under sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870,² consent in writing to the application of this Act to the land, the Collector may by an order in writing direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner when he took possession, the statement mentioned in section 3 of this Act.

Definition of
local au-
thority and
Company.

16. In this Act—

(a) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(b) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

This Act to
be read with
Land Ac-
quisition
Act, 1870.

17. This Act shall, for the purposes of all enactments for the time¹ being in force, be read with and taken as part of the Land Acquisition X of 1870. Act, 1870.²

¹ These words were inserted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² See now the Land Acquisition Act, 1894 (1 of 1894).

³ See now ss. 11, 19 and 17, respectively, *ibid.*

ACT No IV of 1886¹

[29th January 1886.]

An Act to amend section 265 of the Indian Contract Act, 1872

WHEREAS it is expedient to amend section 265 of the Indian Contract Act, 1872, It is hereby enacted as follows.—

1. For section 265 of the said Act the following shall be substituted, namely:—

New section substituted for section 265, Indian Contract Act

"265 Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts and distribute the surplus according to the shares of the partners respectively."

Winding up by Court on dissolution or after termination.

2. [Repeal of part of section 213, Act XIV, 1882] Rep by the Repealing and Amending Act 1891 (VII of 1891)

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT, 1886

CONTENTS

CHAPTER I.

PRELIMINARY

SECTIONS

1. Short title and commencement
2. Local extent

¹ Short title: "The Indian Contract Act (1872) Amendment Act, 1886," see the Indian Short Titles Act 1897 (11 of 1897)

For Statement of Objects and Reasons, see Gazette of India 1885 Pt V, p 135, for Report of the Select Committee see *ibid*, Pt IV, p 47, and for Proceedings in Council see *ibid*, 1885 Supplement, pp 156 and 335, and *ibid*, 1886 Supplement p 201

The Act is in force in Upper Burma (except the Shan States) as amending Act 9 of 1872 see the Burma Laws Act 1878 (13 of 1878), s 1 and the First Schedule, Bur Code

The Act had been previously declared in force in the Town of Mandalay only in Upper Burma by the Upper Burma Laws Act, 1886 (20 of 1886), s 6 (1), now repealed by Act 13 of 1893. S 1 of the Act has been declared in force in the Southal Parganas by the Southal Parganas Settlement Regulation (3 of 1872), s 3, as amended by the Southal Parganas Justice and Laws Regulation, 1879 (3 of 1879) s 3, II A O Code

This Act is in force in British Baluchistan as amending the Indian Contract Act, 1872 (9 of 1872), see the British Baluchistan Laws Regulation, 1913 (2 of 1913), s 3 (1) and Schedule, Bal Code

SECTIONS.

3. Definitions.
4. Saving of local laws.
5. Powers exercisable from time to time.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

6. Establishment of general registry offices and appointment of Registrars General.
7. Indexes to be kept at general registry office.
8. Indexes to be open to inspection.
9. Copies of entries to be admissible in evidence.
10. Superintendence of Registrars by Registrar General.

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

11. Persons whose births and deaths are registrable.

B.—Registration Establishment.

12. Power for Local Government to appoint Registrars for its territories.
13. Power for Governor General in Council to appoint Registrars for Native States.
14. Registrar to be deemed a public servant.
15. Power to remove Registrars.
16. Office and attendance of Registrar.
17. Absence of Registrar or vacancy in his office.
18. Register books to be supplied and preservation of records to be provided for.

C.—Mode of Registration.

19. Duty of Registrar to register births and deaths of which notice is given.
20. Persons authorized to give notice of birth.
21. Persons authorized to give notice of death.
22. Entry of birth or death to be signed by person giving notice.

SECTIONS.

23. Grant of certificate of registration of birth or death.
24. Duty of Registrars as to sending certified copies of entries in register books to Registrar General.
25. Searches and copies of entries in register books.
26. Exceptional provision for registration of certain births and deaths.

D—Penalty for False Information.

27. Penalty for wilfully giving false information.

E.—Correction of Errors.

28. Correction of entry in register of births or deaths

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS

29. Addition of new section after section 13, Act III of 1872.
30. Amendment of the Indian Christian Marriage Act, 1872
31. Addition of new section after section 8 of the Parsi Marriage and Divorce Act, 1865

CHAPTER V

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS

32. Permission to persons having custody of certain records to send them within one year to Registrar General
33. Appointment of Commissioners to examine registers
34. Duties of Commissioners.
35. Searches of lists prepared by Commissioners and grant of certified copies of entries
- 35A. Constitution of additional Commissions for purposes of this Chapter.

CHAPTER VI.

RULES.

36. Rules.
37. [*Repealed.*]

SECTIONS.

3. Definitions.
4. Saving of local laws.
5. Powers exercisable from time to time.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

6. Establishment of general registry offices and appointment of Registrars General.
7. Indexes to be kept at general registry office.
8. Indexes to be open to inspection.
9. Copies of entries to be admissible in evidence.
10. Superintendence of Registrars by Registrar General.

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

11. Persons whose births and deaths are registrable.

B.—Registration Establishment.

12. Power for Local Government to appoint Registrars for its territories.
13. Power for Governor General in Council to appoint Registrars for Native States.
14. Registrar to be deemed a public servant.
15. Power to remove Registrars.
16. Office and attendance of Registrar.
17. Absence of Registrar or vacancy in his office.
18. Register books to be supplied and preservation of records to be provided for.

C.—Mode of Registration.

19. Duty of Registrar to register births and deaths of which notice is given.
20. Persons authorized to give notice of birth.
21. Persons authorized to give notice of death.
22. Entry of birth or death to be signed by person giving notice.

SECTIONS.

23. Grant of certificate of registration of birth or death.
24. Duty of Registrars as to sending certified copies of entries in register books to Registrar General.
25. Searches and copies of entries in register books.
26. Exceptional provision for registration of certain births and deaths.

D.—Penalty for False Information.

27. Penalty for wilfully giving false information.

E.—Correction of Errors.

28. Correction of entry in register of births or deaths.

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS.

29. Addition of new section after section 13, Act III of 1872.
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31. Addition of new section after section 8 of the Parsi Marriage and Divorce Act, 1865.

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32. Permission to persons having custody of certain records to send them within one year to Registrar General.
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34. Duties of Commissioners.
35. Searches of lists prepared by Commissioners and grant of certified copies of entries.
- 35A. Constitution of additional Commissions for purposes of this Chapter.

CHAPTER VI.

RULES.

36. Rules.
37. [*Repealed.*]

ACT No. VI of 1886.¹

[8th March 1886.]

An Act to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872, or the Indian Christian Marriage Act, 1872, and of XV of 1872. certain marriages registered under the Parsi Marriage and Divorce Act, 1865, and for the establishment of general registry offices for keeping XV of 1865. registers of those births, deaths and marriages;

And whereas it is also expedient to provide for the authentication and custody of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the registers were kept, and to declare that copies of the entries in those registers shall be admissible in evidence:

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Births, Deaths and Marriages Registration Act, 1886; and

(2) It shall come into force on such day² as the Governor General in Council, by notification in the Gazette of India, directs.

3* * *

¹ For Statement of Objects and Reasons, see Gazette of India, 1885, Pt. V, p. 12; for Report of the Select Committee, see *ibid*, 1886, Pt. IV, p. 103; and for Proceedings in Council, see *ibid*, 1885, Supplement, pp. 14 and 87, and *ibid*, 1886, p. 290.

² The 1st October, 1888, see Gazette of India, 1888, Pt. I, p. 336.

³ Sub-section (3) was repealed by the Repealing and Amending Act, 1891 (12 of 1891).

2. This Act extends to the whole of British India¹ and applies also, *Local extent.* within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions

3 In this Act, unless there is something repugnant in the subject or Definitions. context,—

“sign” includes mark, when the person making the mark is unable to write his name

“prescribed” means prescribed by a rule made by the Governor General in Council under this Act and

“Registrar of Births and Deaths” means a Registrar of Births and Deaths appointed under this Act

4. Nothing in this Act, or in any rule made under this Act shall *Saving of local laws.* affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas

5 All powers conferred by this Act may be exercised from time to time as occasion requires *Powers exercisable from time to time*

CHAPTER II

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES

6 (1) Each Local Government—

(a) shall establish a general registry office for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 *Establishment of general registry offices and appointment of Registrars General.* (to provide a form of marriage in certain cases) or the Indian Christian Marriage Act, 1872, or, beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Bombay under the Parsi Marriage and Divorce Act, 1865, as may be sent to it under this Act, or under any of the three last mentioned Acts, as amended by this Act,² and

¹ It has been declared in force in the South Mal Parganas by s. 3 of the South Mal Parganas Settlement Regulation (3 of 1872) as amended by the South Mal Parganas Justice and Laws Regulation 1879 (3 of 1879) B & O Code. It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (2 of 1913) s. 3 and Schedule III Code.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act 1885 (13 of 1885) see the First Schedule and s. 4, Bur Code. It had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874) see Gazette of India 1883, Pt. I, p. 528. It has been declared in force in Arakan Hill District by s. 2 of Regulation I of 1916, and in a certain area in the Northern Shan States by s. 10 of Act 13 of 1893, see Notification No. 42 dated 26th August 1926, Burma Gazette, 1926, Pt. I, p. 782; and in the Chittagong Hill Tracts by Notification under s. 4 (2) (a) of the Chittagong Hill Tracts Regulation (1 of 1909) see Notification No. 13083-E A, dated 17th August 1927, Calcutta Gazette, Pt. I, p. 172.

² For General Registry Offices appointed for different provinces, see different local Rules and Orders for Delhi see Gazette of India 1912 Pt. I, p. 1105.

(b) may appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration¹:

(2) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, establish two general registry offices and appoint two Registrars General of Births, Deaths and Marriages for the territories under his administration: one of such general registry offices and of such Registrars General being established and appointed for Sindh and the other for the other territories under the administration of the Governor of Bombay in Council.

Indexes to be kept at general registry office.

7. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act, or under Act III of 1872, the Indian Christian Marriage Act, 1872, or the Parsi Marriage and Divorce Act, 1865, as amended by XV of 1865, this Act, to be made and kept in his office in the prescribed form.

Indexes to be open to public inspection.

8. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies² of the registers to which the indexes relate shall be given to all persons applying for them.

Copies of entries to be admissible in evidence.

9. A copy of an entry given under the last foregoing section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer authorized in this behalf by the Local Government,² and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Superintendence of Registrars by Registrar General.

10. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

Persons whose births and deaths are registrable.

11. (1) The persons whose births and deaths shall, in the first instance, be registrable under this Chapter are the following, namely:—

(a) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865, applies, and in X of 1865,

¹ For Registrars General appointed for different provinces, see different local Rules and Orders.

² For officer authorized to certify copies of entries given under s. 8 in different provinces; see different local Rules and Orders.

(Chapter III —Registration of Births and Deaths)

respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion,

(b) in the dominions of Princes and States in India in alliance with Her Majesty, British subjects being members of a like race, sect or tribe or professing the Christian religion

(2) But the Local Government, by notification in the official Gazette, may * * * extend the operation of this Chapter to any other class of persons either generally or in any local area

B —Registration Establishment

¹² The Local Government may appoint either by name or by virtue of their office, so many persons as it thinks necessary to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may define and if it sees fit for any class of persons within any part of those territories

Power for Local Government to appoint Registrars for its territories

¹³ The Governor General in Council may by notification in the Gazette of India, appoint either by name or by virtue of their office so many persons as he thinks necessary to be Registrars of Births and Deaths for such local areas within the dominions of any Prince or State in India in alliance with Her Majesty as he may define and if he sees fit for any class of persons within any part of those dominions ²

Power for Governor General in Council to appoint Registrars for Native States

⁴[Provided that the powers and functions exercisable by the Governor General in Council under this section shall in the case of any such dominions which are within the political charge of a Local Government,

¹ The words "with the previous approval of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² As to Registrars appointed under this section see different local Rules and Orders, and Genl. R. & O. Vol. II p. 569.

³ For Registrars of Births and Deaths appointed under this section for

(1) Native States in the Bombay Presidency, see Brit. Enact. N. S.

(2) States of Pudukkottai, Tanjavur, and Tanjore, see Gazette of India, 1859 Pt. I p. 52.

(3) State of Mysore, see Gazette of India 1859 Pt. I p. 11 and 1877 Pt. I p. 351.

(4) Hyderabad State, see Gazette of India 1859 and 1880 Pt. I p. 621 and 488 respectively.

(5) Rampur and Feroz States, see Gazette of India 1859 p. 424.

(6) Kashmir and Jammu, see Brit. Enact. N. S.

(7) Nepal, see Brit. Enact. N. S.

(8) Central Provinces and Berar States, see Brit. Enact. N. S. and Gazette of India 1859 Pt. I p. 461.

(9) States in the Central India Agency, see Brit. Enact. N. S.

(10) The territory of the Raja of Salan (Gurmur), see Gazette of India 1877 Pt. I p. 277.

(11) Certain States in Rajputana, see Gazette of India 1912 Pt. I p. 1071.

(12) Baluchistan Agency Territories, see Gazette of India 1903 Pt. I p. 816.

⁴ This proviso was added by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

be exercised by that Local Government by notification in the local official Gazette.]

Registrar to
be deemed a
public
servant.

14. Every Registrar of Births and Deaths shall be deemed to be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

Power to
remove
Registrars.

15. (1) The Local Government or the Governor General in Council, as the case may be, may suspend, remove or dismiss any Registrar of Births and Deaths.

(2) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government or to the Governor General in Council, as the case may be, his intention to do so, and, on his resignation being accepted by the Local Government or the Governor General in Council, he shall be deemed to have vacated his office.

Office and
attendance of
Registrar.

16. (1) Every Registrar of Births and Deaths shall have an office in the local area, or within the part of the territories or dominions, for which he is appointed.

(2) Every Registrar of Births and Deaths to whom the Local Government may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office his name, with the addition of Registrar of Births and Deaths for the local area or class for which he is appointed, and the days and hours of his attendance.

Absence of
Registrar or
vacancy in
his office.

17. (1) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply,¹ not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, or such other officer as the Local Government appoints in this behalf, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(2) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

¹ The section has been declared by the Government of Madras to apply to all Registrars appointed by that Government, under the notification issued under s. 12, see Mad. R. and O.

(3) The Registrar General of Births, Deaths and Marriages shall report to the Local Government all appointments made by him under this section

18 The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths

Register books to be supplied and preservation of records to be provided for

C —Mode of Registration

19 Every Registrar of Births and Deaths on receipt of notice of a birth or death within the local area or among the class for which he is appointed shall if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice forthwith make an entry of the birth or death in the proper register book

Duty of Registrar to register birth and deaths of which notice is given

Provided that—

- (a) if he has reason to believe the notice to be in any respect false he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made and
- (b) he shall not enter in the register the name of any person as father of an illegitimate child unless at the request of the mother and of the person acknowledging himself to be the father of the child

20 Any of the following persons may give notice of a birth, namely —

Persons authorized to give notice of birth

- (a) the father or mother of the child
- (b) any person present at the birth
- (c) any person occupying at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house,
- (d) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred
- (e) any person having charge of the child

21 Any of the following persons may give notice of a death, namely —

Persons authorized to give notice of death

- (a) any relative of the deceased having knowledge of any of the particulars required to be registered concerning the death,

- (b) any person present at the death;
- (c) any person occupying, at the time of the death, any part of the house wherein the death occurred and having knowledge of the deceased having died in the house;
- (d) any person in attendance during the last illness of the deceased;
- (e) any person who has seen the body of the deceased after death.

Entry of birth or death to be signed by person giving notice.

22. (1) When an entry of a birth or death has been made by the Registrar of Births and Deaths under section 19, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar:

¹[Provided that it shall not be necessary for the person giving notice to attend before the Registrar or to sign the entry in the register if he has given such notice in writing and has furnished to the satisfaction of the Registrar such evidence of his identity as may be required by any rules made by the Local Government in this behalf.]

(2) Until the entry has been so signed ²[or the conditions specified in the proviso to sub-section (1) have been complied with,] the birth or death shall not be deemed to be registered under this Act.

(3) When the birth of an illegitimate child is registered, and the mother and the person acknowledging himself to be the father of the child jointly request that that person may be registered as the father, the mother and that person must both sign the entry in the register in the presence of the Registrar.

Grant of certificate of registration of birth or death.

23. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death.

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

24. (1) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area or class for which he is appointed is situate or resides, at the prescribed intervals, a true copy certified by him, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals:

“Provided that in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may, if so directed by his ecclesiastical superior, send the certified copies in the first instance to that superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

¹ This proviso was added by s. 2 (1) of the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911).

² These words were inserted by s. 2 (2), *ibid.*

(Chapter III —Registration of Births and Deaths)

* In this sub section "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head

(2) The provisions of sub section (1) shall apply to every Registrar of Births and Deaths in the dominions of any Prince or State in India in alliance with Her Majesty, with this modification that the certified copies referred to in that sub section shall be sent to such one of the Registrars General of Births Deaths and Marriages as the Governor General in Council by notification¹ in the Gazette of India appoints in this behalf

²[Provided that such certified copies shall in the case of any such dominions which are within the political charge of a Local Government, be sent to the Registrar General of Births Deaths and Marriages for the territories under the administration of that Local Government]

25 (1) Every Registrar of Births and Deaths shall on payment of the prescribed fees at all reasonable times allow and be made in the register books kept by him and give a copy of any entry in the same

Searches and copies of entries in register books

(2) Every copy of an entry in a register kept under this section shall be certified by the Registrar of Births and Deaths and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates

26 Notwithstanding anything in section 19 the ³[Local Government] may make rules⁴ authorizing Registrars of Births and Deaths on conditions and in circumstances to be specified in the rule to register births and deaths occurring outside the local areas or classes for which they are appointed

Except onal provision for registration of certain births and deaths

D —Penalty for False Information

27 If any person wilfully makes or causes to be made for the purpose of being inserted in any register of births or deaths any false statement in connection with any notice of a birth or death under this Act he shall be punished with imprisonment for a term which may extend to three years or with fine or with both

Penalty for wilfully giving false information

F —Correction of Errors

28 (1) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him

Correction of entry in register of

For an instance of such notification see Gazette of India 1890 Pt I p 424

¹This provision was added by s 2 of the Births and Deaths Registration Act 1920 (23 of 1920)

²The words were substituted for the words "Governor General in Council" by s 1 of the Births Deaths and Marriages Registration (Amendment) Act 1911 (6 of 1911)

³For rules made under s 2 conjointly with s 25 at 1st see Genl P & O Vol II p 76 and different Local Rules and Orders All rules made by the Governor General in Council under this Act before 1911 shall be deemed to have been made by the Local Government see s 6 of the Births Deaths and Marriages Registration (Amendment) Act 1911 (6 of 1911)

births or
deaths.

under this Act is erroneous in form or substance, he may, subject to such rules¹ as may be made by the ²[Local Government] with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

(2) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS.

Addition of
new section
after section
13, Act III
of 1872.

29. After section 13 of Act III of 1872 (*to provide a form of marriage in certain cases*) the following section shall be inserted, namely:—

Transmission
of certified
copies of
entries in
marriage
certificate
book to the
Registrar
General of
Births,
Deaths and
Marriages.

“13A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council from time to time directs, a true copy certified by him, in such form as the Governor General in Council from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals.”

Amendment
of the Indian
Christian
Marriage
Act, 1872.

30. In the Indian Christian Marriage Act, 1872, the following XV of 1872. amendments shall be made, namely:—

(a) at the end of section 3, the words “ ‘Registrar General of Births, Deaths and Marriages’ means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886,” shall be VI of 1886. added;

(b) for the words “Secretary to the Local Government” wherever they occur, and for the words “Secretary to a Local Government” in section 79, the words “Registrar General of Births, Deaths and Marriages” shall be substituted;

¹ For rules made under s. 26 conjointly with ss. 28 and 36, see footnote 4 on prepage.

² These words were substituted for the words “Governor General in Council” by s. 3 of the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911).

1886 Act VI] *Births Deaths and Marriages Registration* 495
 (Chapter IV—Amendment of Marriage Act Chapter V—Special
 Provisions as to certain existing Registers)

(c) 10

(d) in section 51 after the words 'Registrar General of Births Deaths and Marriages' the words 'in England' shall be added

31 After section 8 of the Parsi Marriage and Divorce Act, 1860, the following section shall be inserted, namely:—

Insertion of new section after section 8 of the Parsi Marriage and Divorce Act 1860.
 Transmission of certified copies of certificates in marriage register to Registrar General of Births Deaths and Marriages.

"SA Every Registrar except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay shall at such intervals as the Governor General in Council from time to time directs send to the Registrar General of Births Deaths and Marriages for the territory administered by the Local Government by which he was appointed a true copy certified by him, in such form as the Governor General from time to time prescribes of all certificates entered by him in the said register of marriages since the last of such intervals

CHAPTER V

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS

32 If any person in British India or in the dominions of any Prince or State in India in alliance with Her Majesty has for the time being the custody of any register or record of birth baptism naming, dedication, death or burial of any persons of the classes referred to in section 11, sub-section (1) or of any register or record of marriage of any persons of the classes to which Act III of 1872 or the Indian Christian Marriage Act, 1872, or the Parsi Marriage and Divorce Act, 1865, applies, and if such register or record has been made otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept he may, "[at any time before the first day of April 1891] send the register or record to the office of the Registrar General of Births Deaths and Marriages for the territories within which he resides or if he resides within the dominions of any such Prince or State as aforesaid to such one of the Registrar General as aforesaid and the Governor General in Council, by notification in the Gazette of India, directs in this behalf

Section 32 as to persons having custody of certain records to send them with a copy year to Registrar General.

1 Cl. (c) was repealed by s. 4 (2) of the Indian Christian Marriage Act (1872)
 At 1 of Act 1 of 1872
 2 The word "and" is inserted in the word "with" in s. 32 of the Indian Christian Marriage Act (1872)
 3 For an instance of this see the Gazette of India 1 of 1891 p. 2

¹[Provided that such register or record shall, in the case of any such dominions which are within the political charge of a Local Government, be sent to the Registrar General of Births, Deaths and Marriages for the territories under the administration of that Local Government.]

Appointment
of Commis-
sioners to
examine
registers.

33. ²[(1) Any Local Government in the case of registers or records sent under section 32 to the Registrar General for the territories under its administration, and the Governor General in Council, in the case of registers or records so sent to any other Registrar General appointed by him under the said section, may appoint so many persons as it or he, as the case may be, thinks fit to be Commissioners for examining such registers or records.]

(2) The Commissioners so appointed shall hold office for such period as the ³[authority appointing them], by the order of appointment, or any subsequent order, directs.

Duties of
Commis-
sioners.

34. (1) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 32;

and shall deliver to the Registrar General a descriptive list or descriptive lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(2) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(3) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

Searches of
lists prepared
by Commis-
sioners and
grant of
certified
copies of
entries.

35. (1) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect it or them, and copies of entries in those registers or records shall be given to all persons applying for them.

(2) A copy of an entry given under this section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer

¹ This proviso was added by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² This sub-section was substituted by *ibid.*

³ These words were substituted for the words "Governor General in Council" by *ibid.*

or person authorized in this behalf by the Local Government,¹ and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

²[35A ³(1) The Governor General in Council or the Local Government, if he or it thinks fit, may by notification in the Gazette of India or the local official Gazette, as the case may be, appoint more Commissioners than one for the purposes of section 33 each such Commission consisting of so many and such members, and having its functions restricted to the disposal, under this Act and the rules thereunder, of such registers and records sent under section 32 to the Registrar General, as may be specified in the notification.]

(2) If more Commissions than one are appointed in exercise of the power conferred by sub-section (1), then references in this Act to the Commissioners shall be construed as references to the members constituting a Commission so appointed.]

CHAPTER VI

RULES

⁴[36 (1) The Local Government may make rules to carry out the purposes of this Act.]

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) fix the fees payable under this Act,
- (b) prescribe the forms required for the purposes of this Act,
- (c) prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice,
- (d) prescribe the evidence of identity to be furnished to a Registrar of Births and Deaths by persons giving notice of a birth or death in cases where personal attendance before such Registrar is dispensed with,
- (e) prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act and the intervals at which they

¹ For officers appointed under s. 35 (1), see different local Rules and Orders.

² s. 35A was added by s. 2 of the Births, Deaths and Marriages Registration (1886) Amendment Act, 1893 (16 of 1893).

³ This sub-section was substituted by s. 2 and Sch. I of the Devolution Act, 1920 (18 of 1920).

⁴ For Commissioners appointed under this section, see Genl. R. & O., Vol. II, p. 171.

⁵ This section was substituted by s. 4 of the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911).

⁶ As to rules made under this section conjointly with ss. 20 and 21, see footnote to s. 20 supra.

are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them;

(f) prescribe the conditions and circumstances on and in which Registrars of Births and Deaths may correct entries of births and deaths in registers kept by them;

(g) prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate; and

(h) prescribe the custody in which those registers or records are to be kept.

(3) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(4) All rules made under this Act shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Act.]

37. [*Procedure for making and publication of rules.*] Rep. by s. 5 of Act 9 of 1911.

ACT No. X of 1886.¹

[12th March 1886.]

An Act to amend the ²[Indian Penal Code].

WHEREAS it is expedient to amend the ²[Indian Penal Code;] It is XLV of 1860. hereby enacted as follows:—

1-19. [*Amendment of certain sections of the Code of Criminal Procedure, 1882 (Act X of 1882).*] Rep. by the Code of Criminal Procedure, 1898 (Act V of 1898).

¹ Short title, "The Indian Criminal Law Amendment Act, 1886," see the Indian Short Titles Act, 1897 (14 of 1897).

For Statement of Objects and Reasons, see Gazette of India, 1885, Pt. V, p. 249; for Report of the Select Committee, see *ibid*, 1886, Pt. IV, p. 10; and for Proceedings in Council, see *ibid*, 1885, Supplement, pp. 1141 and 1180, and *ibid*, 1886, Supplement, p. 417.

Ss. 21 to 24 (1) inclusive were declared in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872) as amended by the Sonthál Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code. Sections 22 and 25 have since been repealed.

In so far as it amends the Indian Penal Code this Act is in force in Upper Burma (except the Shan States), see s. 4 and the First Schedule to the Burma Laws Act, 1898 (13 of 1898), Bur. Code. Ss. 21 to 25 of the Act had previously been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (20 of 1886), now repealed by Act 13 of 1898.

² These words were substituted for the words "Code of Criminal Procedure, 1882, and certain other Acts" by Sch. I of the Repealing and Amending Act, 1914 (10 of 1914).

20. [*Amendment of Bombay District Police Act, 1867 (Bom Act VII of 1867).*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

10

1860

21. (1) In the second clause of section 40 of the Indian Penal Code between the figures "66" and "71" the figures "67" shall be inserted. Amendment of sections 40 and 64 of the Indian Penal Code.

(2) In the second clause of section 64 of the same Code, after the word "punishable" the words "with imprisonment or fine or" shall be inserted.

22. [*Amendment of section 75 of the Indian Penal Code.*] *Rep. by the Repealing and Amending Act, 1914 (10 of 1914).*

23. After the first paragraph of section 216 of the same Code the following shall be inserted, namely:— Addition to sect on 215 of the Indian Penal Code.

" 'Offence' in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881,² or otherwise, liable to be apprehended or detained in custody in British India, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India."

60

24. (1) For section 225A of the same Code the following sections shall be substituted, namely:—

Substitute of new sections for section 225 of the Indian Penal Code and repeal section 651 of the Code of Civil Procedure

" 225A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

" 225B. Whoever, in any case not provided for in section 221 or section 225 or in any other law for the time being in force, intentionally

¹ The heading "Indian Penal Code" was repealed by the Repealing and Amending Act, 1914 (10 of 1914)

² Col. Stat., Vol. 1.

apprehension,
or escape or
rescue, in
cases not
otherwise
provided for.

offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) [*Repeal of section 651 of the Code of Civil Procedure (Act XIV of 1882)*]. *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

25. [*Substitution of new sections for sections 30, 31 and 32 of the Prisoners Act, 1871.*] *Rep. by the Prisoners Act, 1900 (III of 1900).*

THE INDIAN TRAMWAYS ACT, 1886.

CONTENTS.

Preliminary.

SECTIONS.

1. Short title and commencement.
2. Local extent.
3. Definitions.

Orders authorizing the Construction of Tramways.

4. Application for and consent necessary to making of order.
5. Consent of local or road authority not necessary in certain cases.
6. Procedure for making order.
7. Contents of order.
8. Further order.
9. Power to authorize joint work by local authorities.
10. Cessation of powers given by an order.

Construction and Maintenance of Tramways.

11. Mode of formation of tramway.
12. Inspection of tramway before opening.
13. Agreement between road-authority and promoter as to repair of roadway.

Traffic on Tramways.

14. Rights of promoters and the public over tramways.
15. Tolls leviable by promoter or lessee.
16. Carriage of dangerous or offensive goods.

Licenses to use Tramways.

SECTIONS.

17. Grant to third parties of licenses to use tramway in certain events.
18. Licensee to give to promoter or lessee an account of traffic.

Discontinuance of Tramways.

19. Cessation of powers of promoter and lessee on discontinuance of tramway.
20. Powers of road-authority on cessation of powers of promoter.

Insolvency of Promoter.

21. Proceedings in case of insolvency of promoter.

Purchase of Tramways.

22. Future purchase of undertaking by local authority.

Working of Tramways owned by Local Authorities.

23. Lease of, or working of, tramway by local authority.

Rules.

24. Power to make rules.
25. Power to impose penalty by rule.
26. Procedure for making, and publication of, rules.

Offences.

27. Penalty for failure of promoter, lessee or licensee to comply with act or order.
28. Penalty for obstructing promoter in exercise of his powers.
29. Penalty for interfering with tramway.
30. Penalty for using tramway with carriage having flange-wheels.
31. Penalty for evading payment of proper toll.
32. Penalty for taking or sending dangerous or offensive goods without giving notice.
33. Penalty for licensee not giving to promoter or lessee an account of traffic or giving false account.
34. Saving of prosecutions under other laws.

Settlement of Differences.

35. Differences between promoters or lessees and authorities.

Recovery of Tolls.

SECTIONS.

36. Recovery of moneys due from promoters and, in certain cases, from lessees.
37. Recovery of tolls from licensees.
38. Recovery of tolls from passengers.

Savings.

39. Promoter to have right of user only.
40. Saving of power over roads traversed by tramways.
41. Saving of power of local authority and police to regulate traffic on roads.

Supplemental Provisions.

42. Promoters, lessees and licensees to be responsible for all injuries.
43. Want of funds not a sufficient reason for default.
44. Power to exempt from municipal taxation.
45. Application by local authorities of local funds to tramways.
46. Extension of Act to existing tramways.
47. Prohibition of construction of tramways except under this Act.
48. Transfer of control on exclusion of local area from circle of local authority.
49. [*Repealed.*]
50. Powers of Local Government exercisable from time to time.

ACT No. XI OF 1886.¹

[12th March 1886.]

An Act to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the Indian Tramways Act, 1886; and
(2) It shall come into force at once.
2. (1) It extends in the first instance to the whole of British India except the territories administered by the Governor of Fort Saint George;

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1885, Pt. V, p. 308; for Report of the Select Committee, see *ibid*, 1886, Pt. IV, p. 131; and for Proceedings in Council, see *ibid*, 1885, Supplement, p. 1544; and *ibid*, 1886, Supplement, pp. 7 and 418.

(Preliminary)

in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal

(2) But the Governor of Port Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may by notification in the official Gazette extend this Act to the whole or any part of the territories under his administration¹

3. In this Act unless there is something repugnant in the subject or context,—

(1) "local authority" means a municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund

(2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorized under this Act is, or is intended to be, laid, and includes the surface-soil and sub-soil of a road, and the footway, berms, drains and ditches of a road and any bridge, culvert or causeway forming part of a road

(3) "road-authority," in relation to a road, means—

(a) if a local authority maintains and repairs the road, then that authority,

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested, and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government;

(4) "circle," in relation to a local authority or road-authority, means the area within the control of that authority:

¹ The Act has been extended to the whole of Bombay, except the city of Bombay, and the town of Karachi and its suburb, see Bombay Gazette, 1887, Pt. 1, p. 899. The powers of the Local Government in Sind have been delegated to the Commissioner in Sind, see Bombay Gazette, 1911, Pt. 1, p. 2190. The Act has also been extended to the city of Madras, see Port St. George Gazette, 1886, Pt. 1, p. 759.

It has been declared in force in Upper Burma except the Shan States by s. 4 and the First Schedule to the Burma Laws Act, 1885 (12 of 1885), Bur. Code.

For a list of Acts on the subject of tramways, see—

Bombay, see the Bombay Tramways Act, 1871 (11 of 1871) Bur. Code.
Calcutta, see the Calcutta Tramways (Electric Traction) Act, 1904 (11 of 1904) and the Calcutta Tramways Act, 1880 (11 of 1880) Bur. Code.

Bombay, see the Bombay Tramways Act, 1871 (11 of 1871) Bur. Code.
Karachi, see the Karachi Tramways Act, 1871 (11 of 1871) Bur. Code.
Madras, see the Madras Tramways Act, 1886 (1 of 1886), not reprinted, but is practically obsolete.

¹[(5) 'tramway' means a tramway having one, two or more rails, and includes—

- (a) any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway;
- (b) any electrical equipment of a tramway; and
- (c) any electric supply-line transmitting power from a generating station or sub-station to a tramway or from a generating station to a sub-station from which power is transmitted to a tramway.]

(6) "order" means an order authorizing the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

(7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and by the order and any rules made under this Act as to the construction, maintenance and use of the tramway, have devolved:

(8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(9) "carriage," in the case of a tramway on which steam-power or any other mechanical power ²[or electrical power] is used, includes an engine worked on the tramway for the purpose of producing [or utilizing]² that power:

(10) "toll" includes any charge leviable in respect of the use of a tramway:

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorized tolls:

(12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(13) "District Court" means a principal Civil Court of original jurisdiction, and includes a High Court having ordinary original civil jurisdiction:

(14) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the

¹ This clause was substituted by s. 2 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911).

² These words were inserted by s. 3, *ibid.*

(Preliminary Orders authorizing the Construction of Tramways)

Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act and

(1) "prescribed" means prescribed by rules made by the Local Government under this Act

Orders authorizing the Construction of Tramways

4 (1) The Local Government may make an order authorizing the construction of a tramway in a circle on application made —

Application for and consent necessary to making of order

(a) by the local authority of the circle with the consent of the road authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not itself the road authority, or

(b) by any person with the consent of the local authority of the circle, and of the road authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not the road authority

Provided that if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment the Local Government shall not make the order without the previous sanction of the Governor General in Council

(2) A local authority shall not make an application for an order or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed

5 When it is proposed to lay a tramway in two or more circles, and a local authority or road authority having control in either or any of the circles does not consent thereto or attaches conditions to its consent the Local Government may nevertheless make an order authorizing the construction of the tramway in the circle or by the order impose on the promoter any conditions which it deems fit, if after considering the reasons of the authority for withholding its consent or attaching the conditions thereto it is satisfied that the construction of the tramway in the circle is expedient or is the case may be that the conditions attached by the authority to its consent ought not to be imposed

Consent of local or road authority necessary in certain cases

6 (1) The Local Government on receiving an application shall consider it and if satisfied as to the propriety of proceeding thereon publish in the official Gazette and in such other manner as it deems sufficient for giving information to persons interested a draft of an order authorizing the construction of the tramway

By order of the Local Government

(Orders authorizing the Construction of Tramways.)

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly.

(4) Every order authorizing the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any; and that publication shall be conclusive proof that the order has been made as required by this section.

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

(b) the acquisition by the promoter of land for the purposes of the up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the reinstating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

(Orders authorizing the Construction of Tramways)

- (d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriage way over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level,
- ¹[(e) the space which shall ordinarily intervene between the cut side of the carriage way on either side of a road whereon the tramway is to be constructed, and—
- (i) in the case of a tramway having one rail the rail of the tramway or
 - (ii) in the case of a tramway having two or more rails the nearest rail of the tramway,
- and the conditions on which a smaller space may be permitted,]
- (f) the gauge of the tramway the rails to be used and the mode in which, and the level at which they shall be laid and maintained, and the adoption and application by the promoter of such improvements in the rails and in their situation, and in the sub structure upon which they rest, as the Local Government may from time to time require,
- (g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter the maintenance by the promoter to the satisfaction of the Local Government or the road authority or both of that portion of the road or roads, and the liability of the promoter on the requisition of the Local Government from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety or convenience of the public and to alter the position or level of the tramway to suit future alterations in the road or roads,
- (h) the application of material excavated by the promoter in the construction or maintenance of the tramway,
- (i) the provision of such crossings passing places sidings junctions and other works, in addition to those specified in or authorized by the order as may from time to time be necessary or convenient to the efficient working of the tramway,
- (j) the powers which may from time to time be exercised by the Local Government the local authority the road authority or any person in respect of powers directed to the

¹ This clause was substituted by s. 4 of the Local Tramways (Amendment) Act 1911 (5 of 1911)

(Orders authorizing the Construction of Tramways.)

gas-pipes, water-pipes or other things in or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

- (k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes, water-pipes or other things as aforesaid;
- (l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued by reason of the execution of any work affecting a road along which the part of the tramway was laid, or by reason of the use of the road being interrupted by floods or other cause;
- (m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power¹ [or electrical power] may be used;
- (n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety or convenience of the public;
- (o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;
- (p) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

¹ These words were inserted by s. 5 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911).

(Orders authorizing the Construction of Tramways)

- (q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale mortgage lease, exchange or otherwise, and the conditions subject to which the local authority may be the transferee,
- (r) the performance by the Local Government or by the local authority or said authority of any work required by the Act or the order to be done by the promoter and
- (s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered

(3) The Local Government may in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act 1870¹ in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter

(4) The order shall imply the condition—

- (a) in the case of a tramway of which a local authority is the promoter that a lease thereof shall be granted only in manner by this Act provided, and
- (b) in the case of a tramway of which a local authority is not the promoter that a lease thereof shall be only of the right of user and of demanding and taking the authorized tolls and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway

8 (1) The Local Government may on the application of the promoter, further revoke amend, extend or vary the order by a further order

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order

(3) The Local Government may in its discretion either grant or reject the application

(4) If it grants the application it shall make the further order in the same manner as in order except that no addition to or modification of, the rights powers and authorities asked for in the application or restriction or condition with respect thereto shall be made or imposed by the further order without the consent in writing of the promoter

9. (1) Subject to, and in accordance with the provisions of this Act ¹⁸⁸⁶ the Local Government may, on a joint application, or on two or more ¹⁸⁸⁶ joint ¹⁸⁸⁶ applications

¹ See now the Land Acquisition Act 1924 (1 of 1924)

(Orders authorizing the Construction of Tramways.)

by local
authorities.

separate applications, make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

Cessation of
powers given
by an order.

10. (1) If a promoter authorized by an order to construct a tramway—

- (a) does not within the time specified in the order substantially commence the construction of the tramway, or
- (b) having commenced the construction suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

- (c) does not within the time specified in the order complete the tramway and open it for public traffic,

the following consequences shall ensue:—

- (i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;
- (ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;
- (iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of the working whereof the discontinuance has been proved to the satisfaction of the Local Government.

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

(Construction and Maintenance of Tramways Traffic on Tramways)

Construction and Maintenance of Tramways

11 A tramway shall be constructed and maintained in the manner provided by the order Mode of formation of tramway

12 A tramway, or portion or extension of or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be open fit for such traffic Inspection of tramway before opening

13 Subject to the provisions of any order for the time being in force with respect to the matters mentioned in section 7 sub-section (2), clause (g), the road-authority and the promoter may from time to time enter into agreements as to the keeping in repair of the whole or a part of a road traversed by a tramway and as to the proportion to be paid by either of them of the expense of keeping the road or part in repair Agreement between road authority and promoter as to repairs of roadway

Traffic on Tramways

14 (1) The promoter of a tramway shall subject to the provisions of sub-section (2) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway Rights of promoter and public over tramway

Provided that nothing in this Act or in the order or any rule made under this Act shall affect the right of any person authorized to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed whether on or off the tramway with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway

Provided—

(a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter, and

(b) that the Local Government may by an order authorize the construction of a tramway on any part of a road with rails run above the surface of the road if it is satisfied that the convenience of the public will not be injuriously affected thereby

15 (1) The promoter or lessee may demand and take, in respect of the tramway tolls at each line the limits specified in or determined by the order as it shall contain no provision in that behalf made Tolls to be taken by promoter or lessee

(Traffic on Tramways. Licenses to use Tramways.)

such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

(2) A list of all the tolls authorized to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

Carriage of
dangerous
or offensive
goods.

16. (1) A person shall not be entitled to carry or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

(5) Where a servant of the promoter or lessee refuses under sub-section (4) to carry a parcel which has been received for the purpose of being carried upon the tramway, he shall, as soon as may be, give notice of his refusal to the consignor or consignee if he refuses at a time when neither of them is present.

Licenses to use Tramways.

Grant to
third parties
of licenses to
use tramway
on certain
vents.

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after considering any statement which the promoter or lessee or both may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and to the order and the rules made under this Act, subject to the following provisions, namely:—

(a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;

(Licenses to use Tramways. Discontinuance of Tramways.)

- (b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit,
- (c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run the tolls to be paid to the promotor or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promotor or lessee, which the licensee may demand and take for the use of his carriages;
- (d) the licensee and his officers and servants shall permit one person, duly authorized for that purpose by the promotor or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey;
- (e) any provision of this Act, or of the order or rules made under this Act, relating to the functions of a servant of a promotor or lessee shall be construed, so far as may be, as referring to a servant of the licensee, and
- (f) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof

18. A licensee shall, on demand, give to an officer or servant authorized in that behalf by the promotor or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Licensee to give to promotor or lessee an account of traffic.

Discontinuance of Tramways

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been practically discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promotor and of the lessee, if any, in respect of the tramway or the part thereof of which the working has been so discontinued, shall, from the date of the notification, be at an end; and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

Cessation of powers of promotor and lessee on discontinuance of tramway.

(Discontinuance of Tramways. Insolvency of Promoter.)

Powers of
road-author-
ity on cessa-
tion of
powers of
promoter.

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway of which the working has been so discontinued, and use the materials thereof in reinstating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in reinstating the road.

(3) The cost shall be certified by an officer of the road-authority, and the certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in reinstating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

Insolvency of Promoter.

Proceedings
in case of
insolvency of
promoter.

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or to work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after considering any statement which the promoter may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

(2) Where a notification has been published under sub-section (1), the road-authority may, at any time after the expiration of six months from

(Insolvency of Promoter Purchase of Tramways)

the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20

Purchase of Tramways

22 (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

Future purchase of undertaking by local authority

- (a) within such limits of time as may be specified in this behalf in the order, or
- (b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or
- (c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority, and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever

(2) A requisition shall not be made under sub section (1) unless the making thereof has been approved by the local authority in manner prescribed

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold shall be transferred to the authority to whom the undertaking or part has been sold and shall vest in and may be exercised by that authority in the same manner as if the tramway had been constructed by it under an order made under this Act

(4) Subject to and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles

(*Working of Tramways owned by Local Authorities. Rules.*)

Working of Tramways owned by Local Authorities.

Lease of, or
working of,
tramway by
local author-
ity.

23. (1) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorized tolls.

(2) On the determination of a lease the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has practically discontinued the working of the tramway leased, or of any part thereof, for the space of one month without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorized tolls in respect of the use of the carriages.

Rules.

Power to
make rules.

24. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

- (a) as to the form in which an application for an order shall be made;
- (b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;
- (c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (4), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged

(Rules.)

or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter; and the forfeiture, repayment or return of the money or securities;

- (d) as to the plans and section of any works to be deposited by applicants for orders or by promoters;
- (e) for regulating the use of steam-power or any other mechanical power ¹[or electrical power] on a tramway;
- (f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (j) and (l), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not in the opinion of the Local Government, been effectually so provided for;
- (g) as to the periodical submission, by promoters, lessees and licensees, of accounts of traffic and receipts to the Local Government or as that Government directs and as to the forms in which those accounts are to be submitted;
- (h) as to the accidents of which report is to be made to the Local Government or as that Government directs;
- (i) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and
- (j) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for carrying out the purposes of this Act

(2) A local authority may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and with the order and any rules made by the Local Government under this Act, for regulating—

- (a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;
- (b) the use of animal power on the tramway.
- (c) the distances at which carriages using the tramway are to be allowed to follow one after the other;
- (d) the stopping of carriages using the tramway, and the notice to be given to the public of their approach;

¹ These words were inserted by s. 6 of the Indian Tramways (Amendment) Act, 1911 (C. of 1911)

(Rules.)

- (e) the manner in which carriages using the tramway after sunset and before sunrise are to be lighted;
- (f) the traffic on roads along or across which the tramway is laid;
- (g) the number of passengers which may be carried in any carriage;
- (h) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,
- (i) generally, the mode of use of the tramway.

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules¹ consistent with this Act and with the order and any rules made under this Act—

(a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises, belonging to him; and

(b) for regulating the travelling in any carriage belonging to him.

(4) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under this section.

Power to
impose
penalty
by rule.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend,—

(a) if the authority making the rule is the Local Government, to two hundred rupees, and,

(b) if that authority is a local authority or a promoter or lessee, to twenty rupees;

and, when the breach is a continuing breach, with a further fine which may extend,—

(c) if the authority making the rule is the Local Government, to fifty rupees, and,

(d) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

Procedure for
making, and
publication
of, rules.

26. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

¹For an instance, see *Mad. R. and O.*

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made

Offences

27. If a promoter—

(a) constructs or maintains a tramway otherwise than in accordance with the order, or

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12, or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order,

Penalty for failure of promoter, lessee or licensee to comply with act or order

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order

he shall (without prejudice to the enforcement or specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Jurisdiction), on complaint made by the Local Government or by the local authority or road authority or by the District Magistrate or, with the previous sanction of the District Magistrate by any person injuriously affected by the act or omission, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed

28 If any person without lawful excuse, the burden of proving which shall lie upon him wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys and marks for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees

Penalty for obstructing promoter in exercise of his powers

29 If any person without lawful excuse, the burden of proving which shall lie upon him wilfully does any of the following things, namely—

(a) interferes with removes or alters any part of a tramway constructed under this Act or of the works connected therewith or

Penalty for interfering with tramway

- (b) places, throws upon or across any such tramway any wood, stone, refuse or other thing, or
- (c) does anything in such a manner as to obstruct any carriage using any such tramway, or
- (d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (a), clause (b), or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

Penalty for using tramway with carriage having flange-wheels.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of proper toll.

31. (1) If any person travelling or having travelled in a carriage of the promoter or lessee or of a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(2) When a person commits an offence under this section and refuses on demand of a servant of the promoter, lessee or licensee to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call to his aid.

(3) When the person is taken to the police-station he shall with the least possible delay be forwarded to the nearest Magistrate, unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Penalty for taking or sending dangerous or offensive goods without giving notice.

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

Penalty for licensee not giving to

33. (1) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false

(Offences. Settlement of Differences.)

account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees—

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it

Provided, that a person shall not be punished twice for the same offence

Settlement of Differences.

35. (1) If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority or the road-authority, or a person having the charge of any sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order or the rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or the rules made under this Act, and not otherwise expressly provided for therein the matter in difference shall, except where the parties elect to proceed under section 523 of the Code of Civil Procedure¹ be settled, on the application of either party, by a referee

(2) Where the difference is—

(a) between the promoter or lessee on the one hand and the Local Government either as such or as the road-authority, on the other, or

(b) between the promoter on the one hand and the local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22,

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908) S. 11 section 17.

(Settlement of Differences. Recovery of Toll.)

the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases the referee shall be appointed by the Local Government.

(4) Except where the referee is the District Court, the powers and procedure of the referee may be prescribed.

(5) In the case of a difference between a promoter on the one hand and a local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22, an appeal shall lie to the High Court from the award of the referee as from an original decree of the District Court.

(6) In the case of every other difference the award of the referee shall be final.

Recovery of Toll.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or by an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy that the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessor or his surety (if any):

Provided that nothing in this section shall authorize the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

37. (1) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee, if possible, and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any

Recovery of
moneys due
from pro-
motors and,
in certain
cases, from
lessees.

Recovery of
tolls from
licensees.

(Recovery of Toll Savings)

carriage or other moveable property of the licensee on the tramway or on premises connected therewith and detain the same for forty-eight hours unless the tolls are sooner paid

(3) When application is made to a Magistrate under sub section (1) he may make an interim order of distrain pending his final decision

38 Any tolls due to a promoter lessee or licensee from a passenger may be recovered either by suit or an application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate

Recovery of
tolls from
passengers

Savings

39 (1) Notwithstanding anything contained in this Act or in an order or any rule made under this Act a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway nor shall anything contained in this Act or in an order or any rule made under this Act exempt the promoter of a tramway or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid

Promoter to
have right of
user only

(2) The Local Government may if it thinks fit fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge

40 (1) Nothing in this Act, or in an order or any rule made under this Act, shall take away or abridge any power which a road authority local authority or other person has by law to break up widen alter divert or improve a road railroad or tramway along or across which a tramway is laid

Saving of
power over
road by
local authority
to regulate
traffic on
roads

(2) The road authority, local authority or other person executing any work referred to in sub section (1) shall not be liable to pay to a promoter lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof

41 Nothing in this Act, or in an order or any rule made under this Act shall affect the powers of a local authority or of a Magistrate or police officer to regulate the passage of traffic along or across a road along or across which a tramway is laid, and the authority Magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter lessee or licensee as to the traffic of other persons

Saving of
power of
authority
police to
regulate
traffic on
roads

(Supplemental Provisions.)

Supplemental Provisions.

Promoters, lessees and licensees to be responsible for all injuries.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

Want of funds not a sufficient reason for default.

43. For the purposes of this Act want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

Power to exempt from municipal taxation.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds, ¹[electrical generating stations or sub-stations] and depôts of the promoter, lessee or licensee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

Application by local authorities of local funds to tramways.

45. (1) The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any enactment respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in, or exercised by, a local authority under this Act.

(2) The fund shall also be applicable, with the previous sanction of the Local Government, to a guarantee of the payment of interest on money to be applied, with the concurrence in writing of the local authority, within the limits of the local area under its control, to any of the purposes to which the fund might be applied by the local authority under sub-section (1).

Extension of Act to existing tramways.

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter and his lessee (if any), extend any part of this Act, or any rules made under this Act, either with or without modification, to the whole or any part of a tramway constructed, or authorized by the Local Government to be constructed, before the passing of this Act, and may withdraw any part of the Act or any rules so extended.

Prohibition of construction of tramways except under this Act.

47. (1) A tramway of which the construction has not been authorized by the Local Government before the passing of this Act shall not, after the passing of this Act, be constructed for public traffic in any place to

¹ These words were inserted by s. 7 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911).

(Supplemental Provisions)

which this Act extends, except in pursuance of an order made under this Act.

(2) A person constructing a tramway in contravention of sub-section (1) of this section,

or after the passing of this Act maintaining or using for public traffic, otherwise than in pursuance of an order made under this Act, a tramway which was not constructed, or authorized by the Local Government to be constructed, before the passing of this Act,

shall be liable, on the complaint of the Local Government or local authority, to double the penalty to which a promoter acting otherwise than in accordance with an order is liable under section 27.

48. If at any time a local area comprising a tramway to which this Act or any part thereof or any rule thereunder applies ceases to be included in the circle of a local authority, the functions of that authority under this Act, or the part thereof or the rule thereunder, and under the order (if any), shall, in respect of that local area, devolve on the Local Government or, if that Government so directs, on the local authority of the circle in which the tramway has been included.

49. [Explanation and amendment of section 51 of Railway Act]
Rep by the Indian Railways Act, 1890 (IX of 1890)

50. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

INDEX.

	Page
Agriculturists' Loans Act, 1871	2
Borrowers, joint, liability of, as among themselves	53
Loans, recovery of	53
Rules, power for Local Government to make	52
Arms—see Indian Arms Act, 1878	
Banks—see Government Savings Banks Act, 1873	
Births, Deaths and Marriages Registration Act, 1856	3
Births and Deaths,	
entry of, to be signed by person giving notice	2
exceptional provision for registration of	4
Certificates, of registration, grant of, of birth or death	2
Commissioners,	
appointment of to examine registers	7
duties of	14
searches of lists prepared by, and grant of certified copies of entries	17
Commissions, additional, constitution of	17
Copies of entries to be admissible in evidence	18
Definitions	57
False information, penalty for wilfully giving	3
Indexes,	
to be kept at general registry offices	58
to be open to inspection	58
Marriage Acts, amendment of	414
Persons authorised to give notice of birth	41
Persons authorised to give notice of death	41
Persons whose births and deaths are registered	52
Powers exercisable from time to time	47
Record, permission to persons having custody of to send them within one year to Registrar General	3
Register books,	
correction of entry in	3
searches and copies of entries in	12
to be supplied and preservation of records to be provided for	12
Registrars,	
absence of, or vacancy in his office	51
duty of as to sending certified copies of entries in register books to Registrar General	42
days of, to register births and deaths of which notice has been given	41
office and attendance of	41
power for Local Government to appoint for its territories	45
power of Governor General in Council to appoint, for Native States	45
power to remove	45
superintendence of, by Registrar General	42
to be deemed public servants	45
Registry Offices, general, establishment of, or appointment of Registrar General	47
Statutes	57
Swearing of local laws	57

	PAGES.
Coinage—see Native Coinage Act, 1876.	
Courts—see Presidency Small Cause Courts Act, 1882.	
Court-fees—see Presidency Magistrates (Court-fees) Act, 1877.	
Dramatic Performances Act, 1876	74
Definitions	74
Dramatic Performances,	
exclusion of, at religious festivals	76
power to prohibit certain	74
power to prohibit, in any local area except under license	75
Governor General, powers exercisable by	76
Information, power to call for	75
Order of prohibition,	
penalty for disobeying	74, 75
power to notify	75
power to serve	74
Prosecutions, saving of, under Penal Code, ss. 124A and 294	75
Warrant, power to grant, to police to enter and arrest and seize	75
Elephants' Preservation Act, 1879	227
Elephants,	
rights of Government with respect to certain, and tusks	229
wild, killing and capture of, prohibited	228
Fees, recovery of	230
License,	
power of Local Government to make rules as to, etc.	229
to be produced and shown on requisition of certain officers	229
to kill and capture wild elephants	229
Penalty for contravention of s. 3	229
Prosecution, limitation of	230
Elephants' Preservation Act (1879) Amendment Act, 1883	437
Amendment of the Elephants' Preservation Act, 1879	437
European Vagrancy Act, 1874	16
Certificates,	
form of	22
power to give	21
Charges, recovery of	28
Definitions	20, 29
European British subjects, deprivation of privileges of, under Criminal Procedure Code	27
Evidence of declaration under s. 5	29
Fines, recovery and payment of	27
Imprisonment, procedure on close of	26
Jurisdiction,	
limits of	27
power to invest certain officials with, of Justices under ss. 5, 7, 8 and 9	22
Penalties,	
for assaulting police	25
for begging	26
for escaping from police	25
for escaping from ship	25
for failing to return to work-house	25
for failing to proceed to port of embarkation	25
for quitting work-house without leave	25
for refusal to go before Magistrate	25
for refusing to go on board ship	25

European Vagrancy Act, 1874— <i>concl'd</i>	
Penalties,	
for returning to India	20
on ship master bringing European convicts to India	20
Powers,	
exercise of, conferred on Local Government	20
exercise in Native States of conferred on Magistrates Justices and Police	23
Proceedings, validity of, where Magistrate is not the nearest	23
Prosecutions	23
Rules power to make, for guidance of officers	23
Ship masters, power to exempt certain	23
Vagrants,	
admitted to work house shall be subject to discipline	23
agreement with	24
assistance to, to obtain employment	24
cost of removal of	24
Europeans or soldiers becoming liabilities of importers or employers of	24
Europeans who arrive in charge of animals becoming liability of consignee in case of	24
form of agreement with	24
forwarding to place of employment	24
order to, to go to work house	25
power to perform agreement with	25
power to require apparent, to go before Magistrate	25
refusal of, to accept employment	24
removal of	24
search of	23
subsistence allowance to	24
summary inquiry into circumstances of	25
Work houses,	
Government provision of	25
scale of diet in	25
superintendent of	25
Excise and Sea Customs Law Amendment Act 1825	457
Amendment of the Sea Customs Act, 1878	457
Explosives— <i>see</i> Indian Explosives Act 1884	
Fairways— <i>see</i> Obstructions in Fairways Act 1851	
Foreign Recruiting Act 1874	15
Definitions	15
Offences	15
Place of trial	16
Power to rescind or vary orders	17
Recruiting	
power to impose conditions on	15
power to prohibit or permit	17
Government Savings Banks Act 1873	1
Creditor saving of right of	4
Deposits	
Act not to apply to the regular deposits of the Government	4
legalisation of payments of the Government	4
payment of capital of the Government	4
payment of the Government	4

Government Savings Banks Act, 1873— <i>concl'd.</i>	PAGES.
Deposits,	
payment of, to minor or guardian	5
payment of, belonging to lunatics	5
payment of married women's	5
when excluded in computing court-fees	4
Executor, saving of right of	3
False statements, penalty for	4
Oath, power to administer	4
Rules regulating certificates under s. 8. and payments under ss. 10, 12 or 13	5
Security for due administration	4
Indian Arms, Act, 1878	214
Arms, ammunition, etc.,	
import and export of, for private use	218
in certain cases, to be deposited at police stations or with licensed dealers	220
possession of, without license, prohibited in certain places	220
power to prohibit transport of	219
power to take census of	226
sanction of Local Government required to warehousing of	219
transhipment of	219
unlicensed, import and export of, prohibited	218
unlicensed, manufacture, conversion and sale of, prohibited	218
unlicensed, possession of	220
Arrest,	
of persons conveying arms under suspicious circumstances	219
procedure where, made by person not Magistrate or police officer	219
Definitions	217
Laws, operation of other, not barred	226
Licenses,	
cancelling and suspension of	222
power to make rules as to	221
prohibition of going armed without	220
Local Government, seizure and detention by	224
Magistrate, search and seizure by	224
Offences, information to be given regarding	225
Penalties,	
for breach of license	223
for breach of ss. 5, 6, 10, 13 to 17	222
for breach of rules	224
for concealing arms	223
for delivering arms, etc., to persons not authorised to possess them	223
for knowingly purchasing arms from unlicensed person	223
for secret breaches of ss. 5, 6, 10, 14 and 15	223
Power to confiscate	224
Power to exempt	225
Proceedings,	
notice and limitation of	226
sanction required to certain, under s. 19 (f)	225
Searches in the case of offences against s. 19 (f), how conducted	225
Searching stations, power to establish	219
Indian Contract Act (1872) Amendment Act, 1886	483
Amendment of Indian Contract Act, 1872	483
Indian Criminal Law Amendment Act, 1886	498
Amendment of Indian Penal Code	498, 499, 500

	PAGES
Indian Explosives Act, 1864	443
Accidents,	
inquiry into	449
notice of	447
Definitions	445
Distress of vessel	448
Explosives,	
dangerous, power for Governor General in Council to prohibit the manufacture, possession or importation of	446
extension of definition of, to other explosive substances	449
forfeiture of	449
saving for manufacture, possession, use, sale, transport or import- ation of, by Government	449
Indian Arms Act, 1878, saving of	449
Offences,	
abetment and attempts	448
dangerous, persons committing, power to arrest without warrant	448
Rules,	
procedure for making, publication and confirmation of	449
power to make, conferring powers of inspection, search, seizure, detention and removal	447
power to make, as to licensing of the manufacture, possession, use, sale, transport and importation of explosives	445
Saving as to liability under other laws	449
Indian Law Reports Act, 1875	70
Judicial decisions, authority of	70
Law reports, authority given only to authorised	70
Indian Majority Act, 1875	67
Majority,	
age of, how computed	68
age of, of persons domiciled in British India	68
Indian Oath Act 1873	C
Evidence,	
conclusive as against person offering to be bound	10
persons giving bound to state the truth	10
Oaths,	
administration of, if accepted	16
affirmation by Natives or persons objecting to	9
authority to administer, and affirmations	8
court may ask party or witness whether he will make proposed by opposite party	9
forms of, and affirmations	9
official, abolished	10
to be made by witnesses, etc	8, 9
power of court to tender certain	9
procedure in case of refusal to make	10
proceedings and evidence not invalidated by omission of, or irregu- larity	10
saving of certain, and affirmations	8
Penal Code, ss. 178 and 181, amended	10
Indian Penal Code Amendment Act, 1862	379
Amendment of Indian Penal Code	379, 380
Indian Salt Act 1862	381
Charge by whom to be referred	383
Commissioner of Division, powers of, by whom to be exercised	383
Commissioner of Northern India Salt Reserve	383
Co-location of articles in respect of which licence was issued	383

Indian Salt Act, 1882— <i>concl'd.</i>	PAGES.
Definitions	384
Duties,	
power of Governor General in Council to regulate collection of	386
power to levy additional, as penalty	389
Fees, power of Governor General in Council to fix, for licenses	386
Penalties	388
Police officer, failure of, to attend	391
Posts,	
effect of defining a zone and establishing a chain of	387
power to define zones and establish chains of	387
Power to arrest	390
Power to detain suspected persons and seize goods liable to confiscation	390
Power to enter and search	390
Power to regulate seizures and disposal of things seized	393
Power to search place when article is manufactured under license	390
Procedure in respect of articles seized	392
Procedure in respect of persons arrested	392
Procedure of officer having reason to believe unlawful manufacture	390
Procedure on detention of articles subject to additional duty	392
Punishment for connivance at offences mentioned in s. 9	389
Punishment on second and subsequent convictions	388
Report of arrest, seizure and search	391
Rules,	
further matter for which Governor General in Council may make publication of	394
Salt,	
powers of Governor General in Council to regulate manufacture and refining of, and saltpetre	385
powers of Governor General in Council to regulate possession of, in vicinity of places where saltpetre is manufactured	386
powers of Governor General in Council to regulate possession of, in vicinity of places where salt is manufactured	386
powers of Governor General in Council to impose a duty on manufacture of	386
powers of Governor General in Council to fix minimum price of, excavated, etc., by Government	386
power of Local Government to fix minimum price of, excavated, etc.	387
Salt Revenue Officers,	
officers required to assist	392
power to confer powers of Assistant Commissioner and vexatious search, seizure, etc., by	395
Indian Sea Passengers Act, 1885	458
Certain provisions of Statutes made applicable to specified voyages from India	459
Expenses incurred under ss. 4 and 5 to be a Crown debt	460
Insurance	461
Passengers,	
Governors or consuls may pay expenses of, taken off passenger ships	459
Governors or consuls may send on, if master of ship fail to do so	459
Indian Telegraph Act, 1885	462
Bribery	475
Definitions	464
Disputes,	
between telegraph authority and local authority	469

Indian Telegraph Act, 1885—*conold*

Disputes,	
exercise of powers conferred by s 10 and, as to compensation in case of property other than that of a local authority	469
Gas or water pipes and drains, power to alter position of	463
Government <i>not</i> responsible for loss or damage	467
Intrusion into signal room, trespass in telegraph office or obstruction	473
Licenses,	
breach of conditions of	472
revocation of	467
Messages,	
fabricated, sending of	474
retaining, delivered by mistake	475
telegraph officer fraudulently sending without payment	474
telegraph officer or other official making away with, or altering or unlawfully intercepting or disclosing or divulging purport of signals	474
Misconduct	474
Officers, attempts to commit	475
Penalty	475
Power for local authority to give permission under s 10 (c) subject to conditions	463
Telegraphs,	
exclusive privilege in respect of, and power to grant licenses	465
injury to or interference with telegraph line or post	473
intentionally damaging or tampering with	473
licensed power of Government to take possession of, and to order interception of messages	466
opposing establishment of, on railway land	472
person exercising legal right likely to damage, or interfere with telegraphic communication, to give notice	471
power for local authority to require removal or alteration of telegraph line or post	463
power for telegraph authority to place and maintain telegraph lines and posts	467
power to confer upon licensee powers of telegraph authority	471
power to employ additional police in places where mischief to, is repeatedly committed	475
power to enter on property to repair or remove telegraph lines or posts	463
power to establish on land of railway company	466
removal of trees interrupting telegraphic communication	470
removal or alteration of telegraph line or post on property other than that of a local authority	470
telegraph lines and posts placed before passing of Act	471
unauthorised, using of	472
unauthorised, establishing maintaining or working	472
Indian Tramways Act, 1876	500
Definitions	503
Future purchase of undertaking by local authority	515
Licence grant of, to third parties to use tramway in certain events	512
Orders re, construction of tramways,	
application for and consent necessary to making of	505
extension of powers given by	519
consent of local or road authority not necessary in certain cases	505
contents of	507
further	509
power to authorize joint work by local authority	506

	PAGES.
Indian Tramways Act, 1886— <i>concl'd.</i>	
Orders <i>re</i> , construction of tramways, procedure for making	505
Powers of Local Government exercisable from time to time	525
Promoter, etc.,	
differences between, and authorities	521
licensee to give to, an account of traffic	513
penalty for failure of, to comply with Act or order	519
penalty for obstructing, in exercise of his powers	519
penalty for licensee not giving to, an account of traffic, etc.	520
powers of road authority on cessation of powers of	514
proceedings in case of insolvency of	514
recovery of moneys due from	522
to be responsible for all injuries	524
to have right of user only	523
want of funds not sufficient reason for default	524
Prosecutions, saving of, under other laws	521
Rules,	
power to impose penalty by	518
power to make	516
procedure for making, and publication of	518
Tolls,	
leviable by promoter or lessee	511
penalty for evading payment of	520
recovery of, from licensees	522
recovery of, from passengers	523
Traffic, saving of power of local authority and police to regulate, on roads	523
Tramways,	
agreement between road authority and promoter as to repair of roads	511
application by local authorities of local funds to	524
carriage of dangerous or offensive goods on	512
cessation of powers of promoter and lessee on discontinuance of	513
existing, extension of Act to	524
inspection of, before opening	511
lease of, or working of, by local authority	516
mode of formation of	511
penalty for interfering with	519
penalty for using, with carriage having flange wheels	520
penalty for taking or sending dangerous goods on, without notice	520
prohibition of construction of, except under Act	524
rights of public and promoter over	511
saving of power over roads traversed by	523
transfer of control of, on exclusion of local area from circle of local authority	525
Indian Treasure Trove Act, 1878	119
Appeal against declaration	121
Collector,	
decision of, final; and no suit to lie against him for acts done <i>bond fide</i>	123
matters to be inquired into and determined by	120
to exercise powers of civil court	123
Definitions	119
Dispute,	
in case of, as to ownership of place, proceedings to be stayed	122
settlement of	122

	PAGES
Indian Treasure Trove Act, 1878— <i>concl'd</i>	
Notification requiring claimants to appear	120
Penalty,	
on finder failing to give notice, etc	123
on owner neglecting offence under s 20	123
Proceedings subsequent to declaration	121
Rules, power to make	123
Suit, time to be allowed for, by person claiming the treasure	121
Treasure,	
division of	122
forfeiture of right to, on failure to appear	120
notice by finder of	120
power to acquire, on behalf of Government	122
when, may be declared ownerless	121
when no other person claims as owner of place, to be given to finder	121
when only one person claims, and his claim is not disputed, to be divided	121
Indian Trusts Act, 1882	203
Beneficiary,	
disclaimer by	301
liability of, joining in breach of trust	317
rights to rents and profits	314
rights to specific execution	314
rights to transfer of possession	314
rights to inspect and take copies of instrument of trust	314
right to transfer beneficial interest	314
right to proper trustees	315
right to compel any act of duty	315
right to sue for execution of trust	315
rights and liabilities of transferee of	315
who may be	299
Co-trustees,	
cannot act singly	313
contribution as between	305
joining in receipt for conformity	305
may not lend to one of themselves	314
several liabilities of	305
Creditors, compounding, advantage secretly gained by one of several	324
Debtor becoming creditor's representative	322
Definitions	298
Fiduciary, advantage gained by	322
Interest, beneficial, where it does not appear that transferor intended to dispose of	321
Mortgage of land pledged to Government under Act 20 of 1871	305
Owner, qualified, advantage gained by	322
Obligor, duties of, and liabilities and disabilities	324
Purchasers, <i>boni fide</i> , saving of rights of	324
Transferees saving of rights of certain	317
Trustees	
acquisition by, of trust property wrongfully converted	317
appointment of, by court	316
cannot delegate	311
cannot renounce after acceptance	312
care required from	302
control of discretionary power of	317
discharge of	316

Indian Trusts Act, 1882—*contd.*

PAGES.

Trustees,

for purchase	314
for sale, or his agent may not buy	313
general authority of	310
indemnity of	308
liability of, for breach of trust	306
liability of, where beneficiary's interest is forfeited by Government	308
may not charge for services	313
may not use trust property for his own profit	313
may not buy beneficiary's interest without permission	313
new, appointment of, on death, etc.	319
new, rules for selecting	319
new, powers of	320
no set-off allowed to	307
non-liability of, for predecessor's default	307
non-liability of, for co-trustee's default	307
non-liability of, paying without notice of transfer by beneficiary	308
not to set up title adverse to beneficiary	302
office of, how vacated	318
petition to be discharged from trust	318
power of, to purchase redeemable stock at a premium	305
power to sell in lots, and either by public auction or private contract	310
power to sell under special conditions	310
power to convey	311
power to vary investments	311
power to apply property of minors for their maintenance	311
power to give receipts	311
power to compound, etc.	312
power to sever, of whom one disclaims or dies	312
right to title deed	309
right to re-imbursement of expenses	309
right to be re-couped for erroneous overpayment	309
right to indemnity from gainer from breach of trust	309
right to apply to court for opinion in management of trust property	309
right to settlement of accounts	310
sale by, directed to sell within specified time	306
suspension of powers of, by decree	312
to execute trust	301
to inform himself of state of trust property	302
to protect title to trust property	302
to be impartial	303
to prevent waste	304
to keep accounts and information	304
wrongful purchase by	316

Trusts,

acceptance of	301
constructive, in cases not expressly provided for	324
creation of	300
creation of, for lawful purpose	299
disclaimer of	301
how extinguished	320
incapable of execution or executed without exhausting trust property	321
no one bound to accept	301

	PAGES
Indian Trusts Act, 1882— <i>conclude</i>	
Trusts,	
of immoveable property	300
of moveable property	300
revocation of	320
revocation of not to defeat what trustees have duly done	320
right to sue for execution of	315
subject of	300
survival of	320
where obligation in nature of, is created	321
who may create	300
Trust property,	
acquired without notice of existing contract	323
bequest of, for illegal purpose	322
bequest of, of which revocation is prevented by coercion	322
blended, right in case of	317
following, into the hands of third persons into that into which it has been converted	316
perishable, conversion of	303
purchase by person contracting to buy	323
time allowed for selling	310
transfer of, to one for consideration paid by another	321
transfer for illegal purpose	322
transfer of, pursuant to rescindable contract	322
Undue influence, advantage gained by exercise of	323
vesting of, in new trustees	319
wrongful employment by partner trustee of, for partnership purposes	317
Kazis Act, 1880	253
Kazis,	
power to appoint, for any local area	253
Naib	254
Nothing in Act to confer judicial or administrative powers, or to render the presence of, necessary, etc	251
Land Acquisition (Mines) Act, 1885	470
Compensation,	
if Local Government does not offer to pay, mines may be worked in a proper manner	471
mode of determining persons interested and amount of	470
Construction of Act when land acquired has been transferred to a local authority or company	471
Definitions	472
Local Government to pay for injury done to mines, &c	470, 471
Mines	
declaration that, are not needed	475
if, worked contrary to provisions of Act Local Government may re- quire it to be subjected for sale of land acquired	473
mining communications	470
notice to be given before working lying under land	470
penalty for refusal to allow inspection of	471
power of Local Government to enter and inspect	471
power to prevent or restrict working of	471
Mineral rights, saving for, of Government	470
Pending cases	472
Land Improvement Loans Act 1883	474
But were, persons, liable of availing themselves	473

	PAGES.
Land Improvement Loans Act, 1883— <i>concl'd.</i>	
Definitions	439
Improvements, exemption of, from assessment to land revenue	442
Loans,	
mode of dealing with applications for	440
order granting, conclusive on certain points	441
period for re-payment of	440
purposes for which, may be granted under Act	439
recovery of	441
Local Government, certain powers of, to be exercised by Board of Revenue or Financial Commissioner	443
Rules, power to make	442
Law Reports— <i>see</i> Indian Law Reports Act, 1875.	
Laws Local Extent Act, 1874	47
Definitions	48
Enactments, local extent of, in Schedules to Act	48, 49
Legal Practitioners Act, 1879	230
Advocates and Vakils	235
power for certain High Courts to enrol	247
Attorneys of High Court	236
Certificates,	
dismissed practitioners to surrender	244
fees for	243
Definitions	235
Examiners, Local Government to appoint	247
Exemption of High Court practitioners from part of Act	247
Fines, revision of	245
High Court and Chief Controlling Revenue authority to fix fees on civil and revenue proceedings	244
Pleaders and Mukhtars,	
certificates as to	237
no person to practise as, unless qualified	238
not to be suspended or dismissed without hearing	247
on enrolment may practise in courts and revenue offices	237
on enrolment may practise in High Courts	238
penalty on persons illegally practising as	245
penalty on dismissed, failing to deliver certificate	245
penalty on suspended or dismissed, practising during suspension or after dismissal	245
power to make rules as to qualifications of	236
power to declare functions of	238
power to make rules for, on appellate side of High Court	240
suspension and dismissal of, convicted of criminal offence	238
suspension and dismissal of, guilty of unprofessional conduct	238
Power to call for record in case of acquittal under s. 14	240
Power to Chief Controlling Revenue authority to call for record	243
Procedure when charge of unprofessional conduct is brought in subordinate court of revenue office	239
Revenue agents,	
certificates to	241
dismissal of, convicted of criminal offence	242
enrolment of	241
exceptions as to	244
may appear, plead and act in Munsiff's courts in suits under Bengal Act VIII of 1869	238
no person to act as, in revenue offices, unless qualified	242
power to make rules as to qualifications of	241

	Pages.
Legal Practitioners Act, 1870— <i>concl'd.</i>	
Revenue agents,	
procedure when, is charged in subordinate office	243
suspension and dismissal of, guilty of unprofessional conduct	247
Rules, publication of	237, 241
Suspension pending investigation	233
Suspension or dismissal of person holding mukhtar and revenue agent's certificates	247
Touts, power to frame and publish lists of	246
Legal Practitioners Act, 1894	450
Amendment of the Legal Practitioners Act, 1870	450, 451
Loans— <i>see</i> Agriculturists' Loans Act, 1884	
Land Improvement Loans Act, 1883	
Majority— <i>see</i> Indian Majority Act, 1875	
Married Women's Property Act, 1874	11
Breach of trust, extent of husband's liability for wife's, or devastation	14
Debts,	
ante-nuptial, husband not liable for wife's	14
post-nuptial, wife's liability for	14
Earnings of married woman to be separate property	12
Insurance,	
by husband for benefit of wife	13
married woman may effect policy of	12
Legal Proceedings, married women may take	13
Merchant Shipping Act, 1893	438
Amendment of Act N of 1841	438
Mines— <i>see</i> Land Acquisition (Mines) Act, 1885	
Municipal Taxation Act, 1891	254
Decision of questions arising under Act	255
Definitions	255
Taxes,	
payments to be made in lieu of, referred to in s. 3 (b)	255
power to prohibit levy of	255
Secretary of State in Council to pay, referred to in s. 3 (c)	255
Native Coinage Act, 1876	71
Coinage,	
Native States authorised to send metal to British India for	72
power to impose a charge for	73
Definitions	71
Powers,	
to declare that the coins of a Native State shall be legal tender	71
to limit number of coins to be made under Act for any Native State	73
when, may be exercised	71
Negotiable Instruments Act, 1881	258
Agency	251
Agent,	
for presentment	254
signing, liability of	251
Amount, where, is stated differently in figures and words	252
of cheque,	
bearing 'not negotiable'	251
crossed generally	250
crossed specially	251
crossed, payment, out of due course	251

	PAGES.
Negotiable Instruments Act, 1881— <i>concl'd.</i>	
Presentment,	
for acceptance	277
liability of banker for negligently dealing with bill presented for payment	280
when maker has no known place of business or residence	279
reasonable time for	286
Promissory Notes,	
capacity to make, etc.	271
hours for presentment	278
presentment of, for sight	278
presentment of, for payment	278
presentment for payment of, payable in instalments	278
presentment of, where no exclusive place specified	279
Protest,	
contents of	285
for better security	285
for non-payment after dishonour by non-acceptance	286
notice of	286
of foreign bills	286
when noting equivalent to	286
Negotiable Instruments Act, 1885	453
Amendment of the Negotiable Instruments Act, 1881	454, 455
Oaths— <i>see</i> Indian Oaths Act, 1873.	
Obstructions in Fairways Act, 1881	256
Certain action of Government previous to passing of Act to be deemed to have been taken hereunder	258
Compensation payable in certain cases for damage caused	257
Expenses,	
dispute concerning	256
Government entitled to, incurred in removing obstruction	256
Local Government empowered to remove or destroy obstruction in fairway	256
Notice of removal to be given by Local Government	256
Proceeds how applied	257
Rules,	
penalty for breach of	257
power to make, to regulate and prohibit the placing of obstructions in fairways	257
Saving of powers possessed by Government	258
Things removed may in certain cases be sold	257
'Vessel' to include tackle, cargo, etc.	257
Opium Act, 1878	110
Arrests and seizures, reports of	117
Confiscation, order of, by whom to be made	115
Definitions	112
Disposal of person arrested or thing seized	117
Farmer may apply to Collector or other officer to recover amount due to him by license	118
Fees, recovery of arrears of, duties, etc.	118
Officers to assist each other	116
Opium,	
confiscation of	114
duty on, imported by land	113
power to enter, arrest and seize, on information that, is unlawfully kept in any enclosed place	115

	PAGES
Opium Act, 1878— <i>concl'd</i>	
Opium,	
power to seize, in open places	116
warehousing of	117
Penalties, recovery of, due under bond	118
Poppy cultivation,	
illegal, penalty for	114
illegal, procedure in case of	117
prohibition of, etc	112
Power to detain, search and arrest	116
Prosecutions, presumption in, under s. 9	114
Rules	
power to make, to permit certain matters	112
power to make, relating to warehouses	111
power to make, regarding things confiscated and returned	117
Searches how made	116
Vexatious entries, searches, seizures and arrests	116
Warrants, issue of	117
 Powers-of attorney Act, 1872	177
Power-of attorney,	
deposit of original instrument creating	178
execution under	178
of married women	179
payment by, without notice of death, etc., &c.	178
Presidency Magistrates (Court fees) Act, 1877	169
Fees,	
for summonses and warrants	170
power to remit	170
Presidency Small Cause Courts Act, 1832	76
Appeal from orders under ss. 83 and 87	424
Bailiffs,	
appointment of, and appraisers	416
default of, or other officer in execution of order or warrant	412
extortion or default of, or other officers	424
security to be given by	416
what places, may force open	416
Code of Civil Procedure proceedings to be regulated by	416
Compensation, power to award to debtor or claimant	418
Costs,	
account of, and proceeds	420
fees and of poor persons	422
Court fees Act 1870, ss. 3, 5 and 12, of, saved	422
Courts of Small Causes	
certain persons exempt from arrest by	424
empowered to summon witnesses, etc	424
established	424
execution of decrees of by other courts	411
general finality of decrees and orders of	412
holidays and vacations	424
local limits of jurisdiction of	424
may by consent try suits beyond pecuniary limits of jurisdiction	424
may in certain cases suspend execution of decrees	411
procedure and practice of	424
seal to be used	424
suits in which, has jurisdiction	424

	PAGES.
Presidency Small Cause Courts Act, 1882— <i>contd.</i>	
Courts of Small Causes,	
suits, in which, has no jurisdiction	407
to be deemed under superintendence, etc., of High Court	402
to furnish records, etc., called for by Local Government or High Court	424
Decrees, procedure when, transferred	411
Decree-holder to accompany officer executing warrant	410
Definitions	402
Distress,	
application for distress warrant	416
application to discharge or suspend warrant	418
bar of	420
costs of	419
impounding distress	417
issue of distress warrant	417
penalty for making illegal distress	420
time for distress	417
Documents,	
imprisonment or committal of person refusing to answer or produce	423
return of, admitted to evidence	409
Duties, non-judicial, power to delegate	411
Enforcement of order	423
Fees,	
expense of employing legal practitioners	422
for processes	421
half, repayment of, on settlement before hearing	422
institution	421
power to vary	422
Goods, distrained, claim made by a stranger	418
High Court,	
power to transfer to, cases involving more than one thousand rupees	418
questions arising in suits, etc., under Act to be decided according to law administered by	405
reference when compulsory	420
removal of certain causes into	413
rules with respect to suits removed to	413
Judges,	
absent, performance of duties of	403
appointment, suspension and removal of	402
Chief Judge to distribute business of court	404
or other officer not to practise or trade	405
procedure in case of difference of opinion among	404
rank and precedence of	403
Judgment-debtor, discharge of, on sufficient security	411
Minor may sue in certain cases as if of full age	411
Persons by whom process may be served	424
Place of imprisonment	425
Plaint, return of	408
Plaintiff,	
compensation payable by, to defendant in certain cases	410
costs when, sues in High Court in other cases cognizable by Small Cause Court	409
may abandon suit against defendant resident out of jurisdiction	406

Presidency Small Cause Courts Act, 1882— <i>conold.</i>	421
Power to fine officers	422
Property,	
applicant if entitled to possession of, not to be deemed trespasser for any error in proceedings	416
application for order for possession of, when not entitled, an act of trespass	415
application of proceeds of sale of	419
copies of inventory of, notice to be filed	417
immovable, things attached to, and removable by tenant, to be deemed movable in execution	410
inventory of	417
liability of applicant obtaining order for possession of, when not entitled	416
notice of intended appraisement and sale	417, 419
order for possession of	414
order for possession of, to justify bailiff entering on, and giving possession, etc.	411
sale of	410
stay of proceedings on occupant of, giving security to bring suit against applicant	415
summons against persons occupying, without leave	414
which may be seized	417
Prosecutions, limitation of	425
Registrar,	
appointment of	404
decrees and orders of, to be subject to new trial as if made by a Judge	412
may be invested with powers of a Judge in suits not exceeding twenty rupees	405
may execute all decrees with the same powers as a Judge	412
powers and duties of	404
to hear and determine suits like a Judge	412
Registers and returns	421
Rents, saving of certain	416
Security,	
if not given, party to be deemed to have submitted to judgment	421
to be furnished on reference by party against whom contingent judgment given	421
Suits,	
by and against officers of courts	418
not to be upon decree of court	425
recovery of possession, to bar the, to try title	416
tender in, for any right under the Act	415
Summons, service of	414
Written statement, or, except in cases of set-off	419
Probate and Letters of Administration Act, 1873	40
Amendment of the Companies Act, 1870	42
Property—see Transfer of Property Act, 1882	
Practical Utility Act, 1882	426
Actual agreement	424
Class	425
From power to levy	425
From power to levy and receipt of appraisement	425
From power to levy	425
Local Government, levy of, on and for the, etc.	425
Levy of, on and for the, etc.	425

	PAGES.
Punjab University Act, 1882— <i>concl'd.</i>	
Punjab University,	
college to vest in	432
establishment and incorporation of	431
property of	431
Senate, constitution and powers of	433
Syndicate, Faculties, etc., appointment of	433
Recruiting— <i>see</i> Foreign Recruiting Act, 1874.	
Religious Societies Act, 1880	250
Questions may be submitted to High Court	252
Saving of certain provisions of instruments	252
Societies,	
provision for dissolution of, and adjustment of their affairs	251
upon dissolution of, no member to receive profit	251
Trustees,	
appointment of, under s. 2 to be recorded, etc.	251
now, appointment of, in cases not provided for	250
new, property to vest in, without conveyance	251
saving of existing modes of appointment of, and conveyance	251
Salt— <i>see</i> Indian Salt Act, 1882.	
Sea Customs Act, 1878	124
Agent,	
of owner of goods, to be deemed owner for certain purposes	140
to produce authority if required	209
when ship's, may act for master	140
Allowance,	
in case of wine, spirit, bear or salt	173
special, further	173
Appeals,	
deposit pending, duty demanded	206
from subordinate to Chief Customs Authority	206
Baggage,	
in actual use	147
power to make rules regarding, and mails	161
Bengal Bonded Warehouses Association	176
Bill of entry, restriction on amendment of, or shipping bill	151
Bill of lading, Master if required, to deliver, to Customs Collector and answer questions	156
Boat Note	161
Bonds,	
cancellation and return of	175
for due arrival and re-warehousing	171
general, remover may enter into a	171
power to require, before port-clearance is granted	185
register of	174
required in certain cases before exportation	178
under s. 92 to continue in force notwithstanding removal	171
warehousing	166
warehousing, form of	166
Calcutta Port Commissioners and Bombay Port Trust Acts, saving of	210

Sea Customs Act, 1878—*contd.*

PAGES.

Cargo,	
allowance for period during which vessel is laid up	160
consequence of exceeding period allowed for discharge and shipment of	160
discharge of	186
discharge of, may commence on receipt of due permission . . .	163
export, order for entry outwards to be obtained before, is shipped	157
landing of, during repairs	180
period allowed for discharge and shipment of	160
power to permit immediate discharge of	164
Cargo boats,	
issue of licenses and registration of	162
unlicensed, power to prohibit plying of	162
Cargo books,	
rules regarding, to be kept by Master of coasting vessels . . .	187
Charges, no refund of, erroneously levied or paid unless claimed within three months	152
Coasting trade, Chapters VII, IX X and part of XII inapplicable to power to regulate	183
	184
Coasting vessels, power to board and examine	187
Compensation,	
for loss or injury	175
no, for loss or injury except on proof of neglect or wilful act . . .	208
remission of duty and, to owner in certain cases	210
Customs duties,	
abatment of, on goods on which, is levied on quantity	181
differential, to be levied in certain cases	182
general power to exempt from	147
no abatment of, when levied on quantity	181
on spirit exported under bond from one Indian port to another . .	181
payment of, short-levied or erroneously refunded	182
power to authorise in special cases exemption from	147
power to give credit for and keep account current of	182
procedure on failure to pay	174
reduced, how determined	180
to be recovered on any deficiency in spirit under bond	181
Custom-house agents	209
Customs Officers,	
access of, to private warehouse	168
accommodation of, and servant	159
and servant to be received on board ship	159
appointment of	140
delegation of powers to	141
duties of	157
exempted from service on jury or inquest or as assessors	141
performance of duties of, where no custom-house	141
power to depute, to board ships	157
power of, to authorize search and opening of locks	169
power of, to cause packages lodged in warehouse to be opened and examined	168
stations for, to board and land	143
to have free access to every part of ship, and may seal and secure goods	151
Country produce, re-imported articles of	147
Country provisions and stores may be shipped free of duty	118
Definitions	157, 119, 119

Sea Customs Act, 1878— <i>contd.</i>	PAGES.
Documents,	
amendment of	209
duplicates of, may be granted on payment of fee	209
Drawback,	
allowable on re-export	153
conditions for grant of	153
conditions of, and remission of duty on spirit	183
declaration by parties claiming	155
of duties on wine and spirit allowed for Officers of Navy	153
of excise duty on spirit exported	182
on goods exported to customs ports and thence to foreign ports	153
person entering wine or spirit for, to declare name and rank of officer claiming	154
power to declare what goods are indentifiable and to prohibit, in case of specified foreign port	154
time to claim	155
when, not allowed	155
when payment of, made	155
Expenses, owner to pay, incidental to compliance with customs-law	208
Fine, option to pay, in lieu of confiscation	205
Goods,	
<i>ad valorem</i> , examination of	149
additional charge on, cleared for shipment after port-clearance granted	179
bonded, clearance of, for home consumption	171
bonded, clearance of, for shipment to foreign port	172
bonded, clearance of, as provisions, etc., on vessel proceeding to foreign ports	172
clearance of, for shipment	178
clearance of, for home consumption	166
country, excise duty on importation of certain	147
damaged, abatement allowed on	150
derelict and wreck	148
detention and confiscation of, whose import is prohibited	145
dutiable	146
dutiable, assessment of	165
entry and warehousing on arrival of, transhipped	177
entry of, for home consumption or warehousing	164
expenses of carriage, packing, etc., of, to be borne by owners	175
form of application for clearance of	172
how warehoused	167
if, are improperly removed from warehouse or allowed to remain beyond time fixed, or lost or destroyed or taken as samples, Collector may demand duty, etc.	173
not to be transhipped except as provided	177
not to be shipped, etc., till entry outwards of vessel	178
not to be shipped, discharged or water-borne except in presence of officer	160
not to be landed, etc., on Sundays or holidays without permission nor except within fixed hours	160
not to be shipped, etc., except at wharves	161
not to leave ship unless entered in manifest	163
notice of non-shipment or re-landing of, and return of duty thereon	179
noting removal of	174
on arrival at port of destination, to be subject to same laws as on first importation	171

Sea Customs Act, 1878—*contd*

PAGES

Goods,	
on coasting vessels, if exciseable, not to be unladen without permis-	186
sion	
on which penalty incurred, not to be removed till payment	207
other, of person liable to fine or penalty, may be detained	207
owner to declare real value of, in bill of entry or shipping bill	149
partially composed of dutiable articles	146
period for which, may remain warehoused under bond	170
perishable, power to direct sale of	165
power to prohibit or restrict import or export of	115
power to require, to be weighed, etc	162
power to decide where may be deposited in public warehouses and	
on what terms	175
power to take samples of	208
procedure where, not under valued by owner	141
procedure in respect of, not landed within time allowed	163
procedure in case of, not cleared or warehoused within four months	
after entry of vessel	165
re-landed or transhipped from a vessel returning to port or putting	
into another port	170
tariff value, deterioration of	150
transmission of account of, to officers at port of destination	170
vessel returning to port may enter and land, under import rules	180
warehoused, access of owners to	168
warehoused, owner's power to deal with	168
warehoused, re-assessment of, when damaged	172
warehoused, re-assessment of, on alteration of duty or tariff valu-	
ation	172
warehoused, power to remit duties on, lost or destroyed	175
warrant to be given when, not warehoused	167
water borne, to be forthwith landed or shipped	162
water borne, not to be transhipped without permission	162
Indian Marine and Marine Survey	154
Jurisdiction barred	205
Landing fees	161
Manifest,	
amendment of errors in	156
bulk not to be broken until, delivered and vessel entered inward's	156
delivery of, when vessel anchors below place fixed	156
delivery of, when no place has been fixed	157
delivery of, by coasting vessels on arrival	154
duty of person receiving	157
may be delivered by ship's agent	157
power to fix places beyond which inward bound vessels are not to	
proceed until, delivered	155
signature and contents of	157
Notifications, publication of in local official Gazette	210
Offences,	
punishment for	155
not specially provided for, to be tried	208
Packages,	
and contents etc., included in receipt of goods	201
power to detain containing certain prohibited articles	
British India	204
power to open and examine packed	204

Sea Customs Act, 1878—*contd.*

PAGES.

Packages,	
procedure for disposal by High Court of applications for release of, detained	204
unclaimed, notice regarding	164
Parcels, small, power to land	164
Passes,	
general, grant and revocation of	186
special, for breaking bulk	157
Penalties,	
adjudication of confiscation and	205
enforcement of payment of	207
levy of, for failing to bring-to	205
power to remit, or confiscation	207
under Act not to interfere with punishment under other law	206
Persons may before search, require to be taken before Magistrate or Customs Collector	201
Persons reasonably suspected may be arrested	202
Persons arrested to be taken before nearest Magistrate or Customs Collector	202
Persons taken before Magistrate may be detained or admitted to bail	202
Persons escaping may be afterwards arrested	202
Ports,	
departure from intermediate	185
for coasting trade, power to declare	142
power to appoint, and wharves and customs-houses	141
power to declare that foreign, shall be regarded as customs ports for certain purposes	142
power to remove goods from one, to another	170
warehousing, power to declare	142
Port clearance,	
application for	157
coasting vessels to deliver manifest and obtain, before leaving port of lading	184
grant of	159
grant of, on security of ship's agent	159
Master on applying for, to deliver documents and answer questions	158
no pilot to take charge of vessel proceeding to sea without production of	157
no vessel to depart without	157
power to refuse	158
Power to exempt from ss. 70 and 73	161
Power to search on reasonable suspicion	201
Power to stop vessels, carts, etc., and search for goods on reasonable suspicion	202
Procedure in respect of things seized on suspicion	203
Proceedings, notice of	208
Prohibitions	143
Property, on confiscation, to vest in Her Majesty	205
Provisions and stores for His Majesty's Navy	154
Rent, payment of, and warehouse dues	169
Revision by Local Government	207
Rules,	
power to make	141
power to make, for ascertaining that imported spirit has been rendered unfit for human consumption	183
to be notified	210

	PAGES
Sea Customs Act, 1875— <i>conold</i>	
Rum shrub, etc., how charged with duty	163
Seizure of things liable to confiscation	203
Spirits,	
for export, to be taken direct from distillers to custom house under pass	1-1
gauging and proving of	1-1
provisions regarding, applied to certain liquors	1-3
re-land of, shipped	183
removal for local consumption of, intended for exportation	182
rules for removal of, from distillery, without payment of duty for exportation	1-0
transfer of wine or, from one naval officer to another	154
Tariff values, power to fix	147
Things seized how dealt with	203
Transshipment,	
levy of fee for	177
power to permit, without payment of duty	176
power to prohibit	177
subsidiary rules as to	177
superintendence of	176
Warehouses,	
form of application for license for	143
forwarding of goods to	167
goods in private, on cancellation of license	170
goods not to be taken out of, except as provided by the Act	169
power to remove goods from one to another in same port	170
private, power to license	143
public, power to appoint	142
public, to be locked	175
receipt of goods at	167
revocation of license for	143
Warehousing,	
application to warehouse	16
form of application for	166
Warehouse keeper, responsibility of	176
Warrants,	
form of	167
persons in His Majesty's Navy when arrested to be secured on board till, procured	203
search, power to issue	202
Wharfage fees	209
When seizure or arrest is made, reason in writing to be given	203
Scheduled Districts Act, 1874	31
Boundary, settlement of questions as to	34
Definitions	33
Enactments	
effect of notifying under s. 3	34
extension to Satna strip of, relating to public	35
modification of in their application to Scheduled Districts	34
notification of, in force in Scheduled Districts	33
power to extend, to Scheduled Districts	34
repeal of	33
European British subject saving of criminal jurisdiction	35
saving of other laws	35
Imprisonment place of or transportation	35

	PAGES.
Transfer of Property Act, 1882— <i>contd.</i>	
Incapacity of officers connected with courts of Justice	376
Incumbrances, provision by court for, and sale freed therefrom	349
Interest,	
apportionment of periodical payments on determination of, of per-	
son entitled	341
cessation of	362
condition making, determinable on insolvency or attempted alie-	
nation	336
contingent	337
receipts in lieu of	360
vested	337
vested, when unborn person acquires, on transfer for his benefit . .	337
Leases,	
determination of	369
duration of, for year	369
duration of certain, in absence of written contract or local usage . .	366
effect of holding over	371
exclusion of day on which term of, commences	369
exemption of, for agricultural purposes	371
how made	366
mortgaged, renewal of	354, 358
option to determine	369
under, effect of surrender and forfeiture on	371
Lessor and Lessee, rights and liabilities of	366
Marine and fire policy of insurance, assignment of rights under . . .	375
Marshalling securities	361
Mortgage,	
by conditional sale	351
English	351
not described in s. 58 (b), (c), (d) and (e)	363
power to deposit in court money due on	362
simple	351
to secure uncertain amount when maximum is expressed	361
usufructuary	351
when to be by insurance	352
who may sue for redemption	363
Mortgage debt	375
contribution to	361
Mortgagee,	
liabilities of, in possession	359
loss occasioned by default of	360
mesne, rights of, against prior and subsequent mortgagees	359
prior, postponement of	360
rights of, in possession	358
right to foreclose or sale	355
right to sue for mortgage money	356
subsequent, right of, to pay off prior mortgagee	359
Mortgagor,	
charge of one of several, who redeems	363
implied contracts by	354
right of, to redeem	352
right to money deposited by	362
usufructuary, right of, to recover possession	353
waste by, in possession	355
Negotiable instruments, saving of	370

	PAGE.
Transfer of Property Act, 1882— <i>contd.</i>	
Notice, etc., to or by person incompetent to contract	365
Notice to quit, waiver of	370
Perpetuity, rule against	363
Priority of rights created by transfer	345
Property,	
accession acquired in virtue of transferred ownership	333
burden of obligation imposing restriction on use of land, etc.	343
charge on proceeds of revenue sale	370
common, transfer by co-owners of share in	344, 345
condition must not be invalid	339
condition restraining alienation	335
condition that transfer shall cease to have effect in case specified certain event happens or does not happen	339
conditional transfer of	325
conditional transfer to one person coupled with transfer to another on failure of prior disposition	332
fraudulent transfer	346
fulfilment of condition precedent	328
fulfilment of condition subsequent	329
joint transfer for consideration	344
mortgaged, accession thereto	353, 357
mortgaged, redemption of portion of	353
mortgaged separately, right to redeem one of two	353
operation of transfer	335
oral transfer of	335
persons competent to transfer	335
power of sale when valid	356
prior disposition not affected by invalidity of ulterior disposition sale of one of two, subject to common charge	339
transfer where third person is entitled to maintenance	342
transfer of, to class some of whom come under ss. 13 and 14	336
transfer of, to take effect on failure of prior transfer	336
transfer of, in perpetuity for benefit of public	336
transfer of, to members of a class who attain a particular age	337
transfer of, contingent on happening of specified uncertain event	335
transfer of, to such of persons as survive at some period not specified	338
transfer of, for benefit of unborn person	336
transfer conditional on performance of act no time being specified for performance	340
transfer conditional on performance of act time being specified	340
transfer by person authorised only under certain circumstances to transfer	342
transfer by ostensible owner	347
transfer by person having authority to revoke former transfer	347
transfer by one co-owner	344
transfer for consideration by persons having distinct interests	344
transfer of, pending suit relating thereto	346
ulterior transfer conditional on happening or not happening of specified event	339
Rent, <i>lord's</i> due paid to holder under defective title	345
Rights and liabilities of parties	372
Right of party deprived of thing received in exchange	372
Rules,	
against forfeiture for non-payment of rent	371
power to make	371

	PAGES.
Transfer of Property Act, 1882— <i>concl'd.</i>	
Service or tender on or to agent	364
Tacking abolished	361
Transferee,	
liability of, of actionable claim	375
rights of lessor's	369
rights of, under policy	345
Transfer of Property Act (1882) Amendment Act, 1885	455
Amendment of the Transfer of Property Act, 1882	455, 456
Trusts— <i>see</i> Indian Trusts Act, 1882.	
Universities— <i>see</i> Punjab University Act, 1882.	
Vagrants— <i>see</i> European Vagrancy Act, 1874.	

